Balancing between inclusion and exclusion:
The EU's fight against irregular migration and human trafficking from Ukraine, Moldova and Russia

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Abstract:
The EU has fought against human trafficking diligently since the adaptation of the first anti-trafficking strategy a decade ago. Nevertheless, the European anti-trafficking activity is in danger of turning into inefficient pottering due to two major shortcomings. Its efficiency suffers from tight migration policies and from weak protection of trafficking victims. These fundamental deficiencies also demonstrate that in practice traditional, sovereignty-based security thinking is still prioritised over more ethical considerations.

1 Introduction

After the EU's eastern enlargement on 1 May 2004, its relationship with neighbouring non-member states became one of the EU's new priority issues. Security questions are at the very core of the relationship. With the enlargement many threats moved closer to the Union; there is no longer any "buffer zone" between the core and the 'outside'. In order to achieve the goal of a stable, safe and secure Europe, the EU needs a good, functioning relationship based on mutual trust and close cooperation with the neighbouring 'outsider' states.

This article looks into the efforts to tackle new security issues such as illegal/irregular immigration[1] and human trafficking at the European borders with Russia, Moldova and Ukraine. Cooperation on borders and migration from the angle of security can be seen as a litmus test for how well relations with the EU's neighbouring states work in practice. This is due to the fact that the issue of border controls and migration management represent some of the most controversial questions; these issues are loaded with potential tension. Simultaneous processes of inclusion and exclusion affect security issues at the external borders of the Union. On the one hand, new security problems can be solved only through engaging with the outsider states and their societies. On the other hand, because of real or perceived danger from the outside, there is pressure to resort to the comforting idea of state sovereignty and build up physical borders and exclude the outsiders. The significance of borders is further highlighted by the fact that in the eyes of an individual, borders can represent the most concrete form of exclusion.

More broadly, this article takes part in the debate on the limits and possibilities of cooperation between the EU and the permanent 'outsider' states. Should the EU try to develop some kind

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[1] There is no common, clearly-established definition of illegal immigration. Many researchers refuse to use the term illegal migration but talk instead of "irregular migration". This is because the term "illegal" presumes too much: any foreign national found in the territory of another state without valid documentation is immediately cast as an offender. However, the person without documentation may actually be the very *object* of a criminal act and in need of support and protection from the state. Also a person fleeing as a refugee may have to enter a state without valid documentation. One should give undocumented immigrants the benefit of the doubt and use the more value-free term "irregular migrant". Irregular migrants may have entered the state either legally or illegally. In case they have entered the state legally, they become undocumented migrants by overstaying the legal period of stay. See Thierry Balzacq and Sergio Carrera, "Migration, Borders and Asylum: Trends and Vulnerabilities in EU Policy," *CEPS Working Papers* (2005): 26.

of a 'post-sovereign security community'[2] or should it proceed from the presumption that the non-members – despite the geographical proximity and need for functional cooperation in many areas – are nevertheless always outsiders and there are clear limits to this relationship?

The paper proceeds as follows: first it will briefly analyse the impact of the EU's eastern enlargement and the nature of new security threats for the EU's security relations with the outsider states. This section gives us a general understanding of the broader context in which the EU border security and migration cooperation with the outsiders takes place. Secondly, the paper explores the EU's fight against irregular migration and human trafficking with Ukraine, Moldova and Russia in more detail. Finally, the paper sums up the evidence and ties it together with the broader discussion on the nature and prospects of wider European security cooperation.

2 The contradicting processes of inclusion and exclusion in today's Europe

What makes the construction of long-term security and stability complex in today's Europe is the fact that there are two simultaneous and mutually contradictory processes of building security vis-à-vis outsider states: one connected with the enlargement and pulling towards exclusion and one stemming from the nature of new security threats and pulling towards inclusion.

Exclusion and the enlargement

Despite the talk about Europe without dividing lines, the enlargement and the growing progress in home and justice affairs (JHA) of the EU unintentionally strengthens the trend of exclusion and produces the risk of marginalising the non-members.[3] It has been noted that as the 'area of freedom, security and justice' expands and deepens within the Union, the outer

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[2] See e.g. Emanuel Adler and Beverly Crawford, "Normative Power: The European Practice of Region Building and the Case of the Euro-Mediterranean Partnership (EMP)," in *Institute of European Studies Working Papers* (Berkley: University of California, 2004), Ole Waever, "The EU as a Security Actor: Reflections from a Pessimistic Constructivist on Post-Sovereign Security Orders," in *International Relations and the Politics of the European Integration*, ed. Morten Kelstrup and Michael Williams (London: Routledge, 2000).
[3] More on the development of JHA, see Jörg Monar, "Justice and Home Affairs in a Wider Europe: The Dynamics of Inclusion and Exclusion," *ESRC 'One Europe or Several?' Programme Working Paper*, no. 7 (2000).

edges grow sharper.[4] This trend is evidenced by the fact that for example Poland had to give up visa-free policy with Ukraine, Moldova and Russia in order to conform to the Schengen acquis.[5]

It has become increasingly evident that states that are neither EU members nor candidate countries are in danger of becoming permanent outsiders of the new Europe. Many of these states are considered to be hotbeds of organised crime and other threats. After the enlargement, the dangerous outside has moved closer: there is no buffer zone between the safe inside and the dangerous outside. This development pushes the EU to strengthen its external borders: the traditional response to instability is to build up physical borders and try to contain instability at the margins of the security system, that is, at the border areas of the new enlarged Europe. This traditional response is easy to market to national electorates. Eye-catching statements and exclusionist measures appeal to the common desire for order, control and protection. However, this strategy is growing increasingly inefficient in the globalising world and it does not address the actual causes for instability.

Inclusion and the long-term solving of threats

Alongside the factors that pull towards exclusion there are other factors that drive towards greater engagement, integration and inclusion of the outsiders. First and foremost the process of inclusion is strengthened by the nature of new security threats. In the new security environment where interstate wars are no longer the main threat, traditional approaches to state security are no longer efficient. New threats are blurring the boundaries of internal and external security.[6] Threats such as terrorism, transnational organised crime, irregular migration and human trafficking all need to be dealt with in close cooperation with outsider states and their civil societies.

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[4] Heather Grabbe, "The Sharp Edges of Europe: Extending Schengen Eastwards," *International Affairs* 76, no. 3 (2000).

[5] See the SCADPlus website on the Polish implementation of community acquis on JHA at <http://europa.eu.int/scadplus/leg/en/lvb/e22106.htm>.

[6] See e.g. Malcolm Anderson and Joanna Apap, "Changing Conceptions of Security and Their Implications for EU Home and Justice Affairs," (Brussels: Centre for European Policy Studies, 2002), Didier Bigo, "Internal and External Security(Ies): The Möbius Ribbon," in *Identities, Borders and Orders*, ed. Mathias Albert, David Jacobson, and Yosef Lapid (Minneapolis: Minnesota University Press, 2001).

The idea that security threats need to be addressed in a comprehensive, multidimensional way and in cooperation with the state that is considered to be the source of the threat is not new.[7] This mode of thinking gained ground in Europe already in the 1970s. The CSCE Helsinki process was based on the belief that security was multidimensional in character and, that conflicts and tensions could be eased through trust- and confidence-building between adversaries.[8] Alongside traditional military questions, the CSCE process highlighted softer issues of human contacts, access to information and human rights. The Helsinki process can be seen as one of the first steps to address human security at the international level.[9]

The current debate on cooperative security emphasises a long-term stabilising, conflict-preventive strategy which addresses issues of economic development, the rule of law, good governance, human rights and democracy. The basic idea is to deal with the root causes of instability – for example economic underdevelopment, bad governance or human rights violations – before the conflict breaks out or terrorism, organised crime or migration flows become uncontrollable. Cooperative security is based on the liberal belief that international security can be built through domestic transformation.[10]

Irregular migration and human trafficking as security threats

Intertwined problems of irregular migration and organised crime connected with it – such as human smuggling and trafficking – are typical new threats in a sense that they are all blurring the traditional division of internal and external fields. The criminal action is revolving around borders but typically the gangs responsible for trafficking are transnational in character. Their action is having an impact on both the source and the destination states.

Even if human smuggling and trafficking are often bundled up together both conceptually and policy-wise, there is a fundamental difference between them. Human smuggling refers to transportation of human beings across the border without valid documentation for money or

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[7] On the concept of cooperative security, see e.g. Gareth Evans, "Cooperative Security and Intrastate Conflict," *Foreign Policy*, no. 96 (Fall 1994): 3-20.

[8] So paradoxically, security was to be achieved not *against* but *with* one's adversaries.

[9] Christopher Berzins, "The Puzzle of Trust in International Relations: Risk and Relationship Management in the Organisation for Security and Cooperation in Europe" (PhD Thesis, London School of Economics and Political Science, 2004).

[10] This is the core idea of the so-called democratic peace theory that is based on the notion that democratic states rarely go to war against each other. According to this way of thinking, international security structures and actors are of secondary importance.

some other benefit.[11] The contact between the smuggled person and the smuggler will end after the border-crossing. In a case like this, both the smuggler and smuggled person are treated usually as offenders of law.[12]

However, this article focuses on the more complex question of human trafficking. Human trafficking is in question when a person enters a country – legally or illegally – assisted by a person or criminal network, which afterwards forces the trafficked person into labour or prostitution.[13] In a case like this, the trafficking activity is criminal and a grave human rights violation of the trafficked person, regardless of his or her possible initial consent. The trafficked persons should not be treated as criminals but instead as victims of a serious human rights violation.

It has been estimated that around 200 000 women, men and children are trafficked annually from Eastern Europe.[14] The wealthy western part of the EU is the main destination for trafficking from Eastern Europe. In 2001 the Commission estimated that around 120 000

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[11] The difference in terms is clearly established in international law by the two protocols to the UN Convention against Transnational Organized Crime (UN TOC) dealing with trafficking and smuggling. The Trafficking and Smuggling Protocols (the Palermo Protocols) were concluded in 2000 and came into force in December 2003 and in January 2004 respectively. The smuggling protocol defines smuggling of migrants as: "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (Article 3). See *Protocol against the Smuggling of Migrants by Land, Sea and Air to the United Nations Convention against Transnational Organized Crime*, A/RES/55/25.

[12] The most evident exception is persons fleeing as refugees who often enter a state without valid documentation. This action should not be considered as criminal by law.

[13] UN TOC trafficking protocol defines human trafficking in these terms: "[...] the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. [...] The consent of a victim of trafficking in persons to the intended exploitation [...] shall be irrelevant where any of the means set forth (above) have been used. The recruitment, transportation, transfers [...] of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth (above)". *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, A/RES/55/25.

[14] Heikki Mattila, "Combating Human Trafficking," *INTERSEC Journal of International Security* 14 (February 2004), Heikki Mattila, "Combating Human Trafficking," *INTERSEC Journal of International Security* 14, no. February (2004). Mattila is a researcher at International Organisation for Migration (IOM).

victims were trafficked annually to the EU are from Central and Eastern European states.[15] Some of the trafficked individuals become domestic servants or work in sweatshops or construction sites. Sometimes they are forced into begging and crime. Most of trafficked victims are, however, forced into prostitution.

A study on trafficking for sexual exploitation from the Russian Federation offers several reasons for this flourishing criminal activity: the lure of great profits, high-degree of criminalisation in Russian society, corruption of police and officials on all levels, poor legislation of the issue as well as many social and economic problems stemming partly from the transition and partly from the more traditional characteristics of Russian society. These include a growing pool of homeless children, chronic unemployment in many regions and within many social groups, deep and long-term poverty, poor status of women in society, and general lenience towards sexual and physical violence against them.[16] Reasons for trafficking are fairly similar in Moldova and Ukraine.[17]

The European response to new security threats is outlined in the European Security Strategy (ESS, 2003). The document admits that traditional direct military threats are becoming less and less important. Instead, the document highlights new security threats including irregular migration and human trafficking. The document notes the blurry nature of these threats and claims that the only long-term solution is to include the neighbouring states into the sphere of cooperation and general well-being: the union needs to share the benefits of the economic and political cooperation within the union with its neighbours in the east.[18] Therefore the challenge for the EU is to increase security and freedom within the EU without excluding and marginalising the outsiders but instead accommodating and encouraging interaction with – and potential change within – those states.

Dealing with the neighbours

Inclusion and strengthened engagement of neighbours is exactly what the Union attempted when it drafted its new Neighbourhood Policy in 2003. The initiative was outlined in the

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[15] *Trafficking in Women. The Misery Behind the Fantasy: From Poverty to Sex Slavery. A Comprehensive European Strategy*, 8.3.2001.

[16] Donna M. Hughes, "Trafficking for Sexual Exploitation: The Case of Russian Federation," (Brussels: IOM, June 2002).

[17] See "Trafficking in Persons Report," (Washington DC: The US Department of State, June 2005), pp. 157-59 and 217-18.

[18] *A Secure Europe in a Better World: European Security Strategy*, 12 December 2003.

Commission Communication Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours.[19] The document envisaged inclusion of the neighbouring countries in the internal market as well as through increasing cooperation and free movement of persons. The ESS and European Neighbourhood Policy suggest that European strategy towards its neighbours is founded on the ideal of increasing inclusion of outsider states, their societies and citizens. According to this ideal borders should not be built as barriers but as permeable and fluid constructions capable of accommodating change and interaction.[20]

Nevertheless, in practice the EU's strategy on JHA matters have been cautious and concentrated primarily on placing obligations on the neighbouring states on migration and border management issues. One of its first and foremost priorities has been negotiation on readmission agreements with the neighbouring states and making border management and control more efficient. By a readmission agreement a state agrees to take back to its territory without strict formalities their own nationals found irregularly in the territory of the EU as well as foreign nationals who have arrived there via their territory. Elspeth Guild has suggested in her research that the EU's current policy towards third states that obliges governments to take measures directly against their citizens and citizens of its neighbouring states, is creating more tensions and hence increasing instability in the region.[21]

However, simultaneously with its cautious and somewhat restrictive emphasis, the EU has promised both technical assistance and visa facilitation to the countries that play by the rules it has set. Despite the fact that Moldova, Russia and Ukraine have all been kept on the visa black list, the EU has made some efforts to allow for easier access into its territory from these states. The EU has been negotiating visa facilitation with Ukraine and Russia. Moldova and Russia have conducted visa policies based on the tradition of reciprocity, whereas Ukraine has allowed for visa-free travel for EU citizens since May 2005. The JHA and Country Action Plan for Ukraine, the Common Space of Freedom, Security and Justice and the Action Plan against Organised Crime for Russia, and the Country Action Plan for Moldova have set the

[19] *Wider Europe - Neighbourhood: A New Framework for Relations with Our Eastern and Southern Neighbours*, COM(2003)104 final.
[20] Liam O'Dowd and Thomas M. Wilson, eds., *Borders, Nations and States: Frontiers of Sovereignty in the New Europe* (Aldershot: Avebury, 1996).
[21] Elspeth Guild, "What Is a Neighbour? Examining the EU Neighbourhood Policy from the Perspective of Movement of Persons" (paper presented at the Western NIS Forum for Refugee-Assisting NGOs, Yalta 1-3 June, 2005), p. 28.

tone for the JHA cooperation. Even if the strategies vary slightly from country to country, there are plenty of common points. These common priorities for cooperation include border management, readmission and migration, and common fight against organised crime, in particular money laundering and trafficking in drugs and human beings.

3 The European fight against human trafficking

The EU has been targeting human trafficking by various means since the adaptation of first European strategy paper on the issue by the Commission in 1996. Since then, the strategy has developed especially in four fields: 1) assistance and aid, 2) judicial and legislative measures, 3) cooperation in policing and border management, and 4) gathering information and promoting best practices.

The EU's anti-trafficking assistance is actually more of an instrument than a field of action. Assistance programmes comprise various issue areas such as prevention, prosecution and rehabilitation of victims. In addition to STOP, AENEAS and AGIS programmes that combat human trafficking, the EU launched DAPHNE programme in 2000. This programme concentrates on issues of violence against women and children. Assistance against organised crime and human trafficking has also been channelled through regional TACIS, PHARE and CARDS aid.

The projects under these framework programmes deal with issues such as research on trafficking, development of cooperation and networking among officials and civil society, exchange of information, training, development of data-collection, etc. There has been a great demand for the programmes but the EU assistance has been criticised that it does not always allow for long-term planning.

Secondly, the EU has been active in making judicial reviews of national legislation and urging for minimum standards and ratification of UN TOC protocol by its member states. Worth mentioning are the 1997 the Hague Ministerial Declaration on European guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation, the Council Resolution on initiatives to combat trafficking in human beings, in particular women (2003) and the most recent Commission Communication 'Fighting trafficking in human beings – an integrated approach and proposals for an action plan' (2005)[22] This form of anti-trafficking activity aims to strengthen legislation and hence the

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[22] *Commission Communication "Fighting Trafficking in Human Beings - an Integrated Approach and Proposals for an Action Plan"*, 18 October 2005, COM(2005) 514 final, *Council Resolution on Initiatives to Combat Trafficking in Human Beings, in Particular Women*, 20 October 2003, 2003/C

prosecution practices. The EU's own legislation on the issue addresses the problem as a form of irregular migration, with an emphasis on law enforcement measures in the area of criminal law and criminal proceedings.

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Central EU legislation on human trafficking

• Council Framework Decision on combating trafficking in human beings (19 July 2002)
- consent of a victim to the exploitation is irrelevant in the definition
- neither investigations nor prosecution of offences covered by the framework decision are dependant upon a formal complaint filled by the victim of human trafficking

• Council Directive on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities (29 April 2004)
- the victims of human trafficking who cooperate with the relevant authorities may be given (after a reflection period) a temporary residence permit (usually for 6 months which may be prolonged if considered necessary for the proceedings)[1]

• Council Directive on defining the facilitation of unauthorised entry, transit and residence and Framework Decision on strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (28 November 2004)
- obliges member states to take action against persons who intentionally assist or attempt to assist a person to enter, transit or reside in the territory of an EU state

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Thirdly, the EU has attempted to develop cooperation in the field intelligence, policing and border management. Europol and Eurojust have been equipped with competences on this issue. New cooperation structures that deal partly with this issue have also been set up in the framework of the European Police College (CEPOL) and European Crime Prevention Network (EUCPN). These measures aim to prevent trafficking and hold traffickers liable for their action.

The final field of anti-trafficking cooperation within the EU framework has been gathering and distributing information on human trafficking through meetings, workshops and conferences. These are often organised together with other bodies and organisations dealing with the issue such as the International Organisation for Migration (IOM). Worth mentioning are the Conference on Human Trafficking in Brussels in 2002 and the most recent conference

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260/03, *The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation.*

on the same topic in October 2005. The 2002 conference adopted Brussels Declaration[23] and set up a Commission-funded Experts Group on Trafficking in Human Beings. The Experts group published its report in December 2004.[24] The report assesses human trafficking as a phenomenon and the EU's handing of the question comprehensively and critically. The Commission took their report as a guideline for the drafting of communication 'Fighting trafficking in human beings – an integrated approach and proposals for an action plan'. This document reflects somewhat more humanitarian approach to the question of human trafficking. The concrete steps are, however, still missing.

Anti-trafficking cooperation with Moldova, Ukraine and Russia
Ukraine, Moldova and Russia are all major source and transit countries for human trafficking. The main destination is Western Europe but people are also trafficked within these states (especially from Ukraine and Moldova to Russia), and to such states as Turkey, Israel, the United Arab Emirates and the United States. Most of the victims are forced into prostitution; some are also forced into begging, criminality or forced labour.[25] Fighting trafficking is especially difficult because of weak state control (especially in the case of Moldova), high degree of corruption at all levels of society and general criminalisation of the state and society.

The EU has been cooperating with Moldova, Ukraine and Russia in all four fields of direct anti-trafficking action (assistance, judicial cooperation, border management and policing, and gathering and distributing information). Many NGO, INGO, government-led, regional and transnational projects that have anti-trafficking focus have received at least partial funding through European assistance frameworks. Some of them have a humanitarian, victims' rehabilitation and protection emphasis; others concentrate more on prevention; while still others concentrate on making prosecution more effective.

An example of a transnational project that focuses on the latter is a project called Establishment of the network of and joint training for operational law enforcement officers, NGOs and IOs in fighting human trafficking into the EU member states from EU accession countries and countries bordering the EU after enlargement (2003). This programme took

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[23] *Brussels Declaration on Preventing and Combating Trafficking in Human Beings*, 20 September 2002.
[24] "Report of the Experts Group on Trafficking in Human Beings," (Brussels: European Commission, Directorate-General Justice, Freedom and Security, 22 December 2004).
[25] "Trafficking in Persons Report."

place under the framework of AGIS and it involved EUROPOL, IOM, European Parliament and Commission as well as relevant agencies from Albania, Bulgaria, France, Italy, Romania, Moldova, Russian Federation and Ukraine.[26]

About 10 million euros of the TACIS funds has been allocated over the period 2002-2004 to Belarus, Moldova, Ukraine and Russia for specific anti-trafficking activity. In general, Tacis funding has contributed to the fact that legislation and border controls have improved considerably, especially in Ukraine and Russia.

In the judicial, legislative area, cooperation schemes between Eurojust and national general prosecutor's offices in Ukraine, Moldova and Russia have been developed.[27] The EU has also actively encouraged its neighbouring non-member states to accept and implement international standards and best practices against human trafficking. This has been done mainly through political dialogue within the Neighbourhood Policy framework (and the Common Spaces scheme with Russia). In particular, Russia has been actively cooperating in transnational law enforcement investigations. The EU has adopted an Action Plan against Organised Crime on Russia. All these states have been working hard towards implementing the international anti-trafficking standards in recent year, but none of them yet fully complies with them.

Cooperation on the issues of border and migration control has been one of the primary concerns for the EU. Country action plans and the Common Space for Security, Justice and Freedom reflect this emphasis. The EU's typical measures in this area include information gathering and distribution as well as educational programmes. It has carried out feasibility studies on the issue in neighbouring states including Russia, Moldova and Ukraine and taken the issue up in all main political documents and summits.

There have also been some interesting new openings. One of the most problematic issues of border control has been the break-away region of Transnistria at the Moldovan-Ukrainian

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[26] More on the project, see <http://www.belgium.iom.int/AGIS2003/>.
[27] See *European Union Action Plan on Common Action for the Russian Federation on Combating Organised Crime*, (2000/C 106/02), *European Union Action Plan on Justice and Home Affairs Concerning Ukraine*, 6 December 2001, *Proposed EU-Moldova Action Plan*, 09 December 2004, *Proposed EU-Ukraine Action Plan*, 9 December 2004, *Road Map on the Common Space of Freedom, Security and Justice between the Russian Federation and the European Union*, 10 May 2005. See also "Eurojust and Human Trafficking: The State of Affairs," (Eurojust, October 2005). Available at <http://home.student.uva.nl/boudewijn.dejonge/Eurojust&HumanTrafficking.pdf>.

border. This region of frozen conflict has developed into a corrupt safe-haven for traffickers and smugglers.[28] In order to help Moldavian and Ukrainian officials to gain control of the borders, the EU launched its first Border Assistance Mission in the area at the end of November 2005. The mission will help prevent smuggling, trafficking and customs fraud by providing service and training to the Moldovan and Ukrainian border and customs services.[29]

The biggest and most severe shortcoming of Moldova, Russia and Ukraine alike, is their inability to provide the victims of trafficking protection, rehabilitation and counselling services. In many cases the traffickers re-establish their control over the victims as soon as they have returned to their home countries and often victims are re- trafficked abroad. Therefore it is justified to claim that a policy that does not offer rehabilitation is a failure on humanitarian as well as anti-trafficking grounds.

4 Restrictive migration policies benefit the traffickers

The EU has done a great deal to combat human trafficking. However, these technical measures are not sufficient as such but the policy needs to be evaluated against the broader context of migration. As mentioned earlier, the EU has traditionally seen the question of human trafficking as one form of irregular migration.[30] Accordingly, the EU's broader anti-trafficking strategy is outlined in the main Justice and Home Affairs (JHA) documents. The Treaty of Amsterdam (1999) transferred questions concerning visas, immigration and other areas related to free movement of persons to the EU's competence. Since then, the Tampere Conclusions and Scoreboard (1999), and the successive Hague Programme (2004) have framed the JHA and the anti-trafficking agenda.

The Tampere Programme addresses trafficking exclusively in the context of management of migratory flows and has caused some confusion by using vague language that hints that trafficked persons are seen above all as illegal migrants who should primarily return to and be re-admitted by their countries of origin.[31] In general the document, however, used a more inclusionist tone. According to the document the European migration policy should be based on a "solid understanding of the situation in neighbouring countries and an in-depth dialogue

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[28] The Economist, 30/06/05 http://www.economist.com/displayStory.cfm?story_id=4135736
[29] See *Declaration by the Presidency of the European Union: European Union's Border Mission to Moldova and Ukraine*, 30 November 2005.
[30] See report of the"Report of the Experts Group on Trafficking in Human Beings," p.13.
[31] Ibid., p. 136.

with the countries".[32] Moreover, The Hague Programme envisaged partnerships with third countries on issues of migration and anti-trafficking activity.[33]

In 2002 the Commission issued a communication, in which it states that the cooperation with the outsider states in the area of migration was to be based on a balanced overall approach addressing the root causes of migratory movements. The document calls for a partnership on migration stemming from a definition of common interests with the countries concerned. It also outlines specific and concrete initiatives to help these countries to increase their capacity in the area of migration management.[34] There is a clear trade-off between aid and control: the third states will receive assistance and aid in order to tackle the root causes but at the same time they are required to control their borders more tightly. Assistance programme works as leverage on the border control issues. A four-year 250-million euro AENEAS programme on migration and asylum based on this initiative was launched in 2004. The programme is "in particular intended for those third countries that are actively engaged in the preparation or in the implementation of a readmission agreement initialled, signed or concluded with the European Union". In other words, EU aid is used to gain leverage on the issue of readmission agreement.[35]

Effective controls and readmission is, however, just a small piece in the bigger picture of migration. Pressure for economic migration at the external borders of the EU is a fact. The EU's economy needs migrants and many people from the outside are willing to come and fill the need. Managed and flexible legal migration policy is a way to combat growing irregular immigration. The demand for migrant workers will be filled by irregular migration unless policy makers recognise that it is in their national interest to facilitate and manage the process. The Tampere and Hague programmes acknowledge the need for migrant workers also in the unskilled and informal employment sectors. In general the language of the documents reflect the ideal of inclusion of the outsiders. However, in practice the EU and many of its member

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[32] *Tampere European Council: Presidency Conclusions*, 16 October 1999.

[33] *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union*, 5 November 2004.

[34] *Communication from the Commission on Integrating Migration Issues in the European Unions's Relations with Third Countries*, 3 December 2002, COM(2002) 703 final.

[35] The Council adopted this proposal in February 2004. See *Regulation Establishing a Special Programme of the Financial and Technical Assistance to Third Countries in the Area of Migration and Asylum*, February 2004.

states retreat to restrictive discriminatory migration policies.[36] Because of domestic, political sensitivity, governments are usually reluctant to recognise their dependency on both skilled and unskilled migrant labour. Restrictive migration policy is however strengthening the strongholds of trafficking and helping the marginalisation of outsider states, societies and individuals in new Europe.

Migration management is a key tool in the fight against human trafficking. Flexible and facilitating migration policy is not only a prerequisite for the economic growth in the EU area[37] but also a way to combat illegal migration and the increasing involvement of organised smuggling and trafficking networks in it. If the borders are barriers to labour supplies meeting demands, and if there is little general knowledge about proper migration channels, trafficking is likely to grow considerably. Research indicates that there is a greater vulnerability to trafficking where there is a lack of access to regularised migration routes, lack of experience of migration between countries and lack of regulation of the labour market. [38]

5 The EU is failing to protect the victims

Another major shortcoming of the EU's anti-trafficking policy is the current weak protection of abused victims. The EU has been hesitant to take up the issue of human trafficking first and foremost as a human rights question.

According to the current EU legislation, victims of trafficking are granted a short-term residence permit before they are sent back to their home country. In case victims agree to assist the officials by giving evidence or testifying against the traffickers, they are given a longer residence permit, usually for six months.[39] Many experts and human rights NGOs claim that the current policy is too stingy. The EU should guarantee the victims of trafficking the possibility to get longer residence permit and assistance in the receiving country

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[36]*Opinion of the Experts Group on Trafficking in Human Beings of the European Commission: Opinion the Green Paper on an EU Approach to Managing Economic Migration Presented by the Commission (11.1.2005 COM(2004)811 final)*, 23 May 2005..

[37] *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, Tampere European Council: Presidency Conclusions.*

[38] "Report of the Experts Group on Trafficking in Human Beings."

[39] *Council Directive on the Residence Permit Issued to Third Country Nationals Who Are Victims of Trafficking in Human Beings or Who Have Been the Subject of an Action to Facilitate Illegal Immigration, Who Cooperate with the Competent Authorities*, 29 April 2004.

regardless of their willingness or ability to file a complaint or provide information against the traffickers.[40]

However, humanitarian considerations alone are not the only reasons for a softer, more inclusionist strategy with the victims. A more inclusionist and humane policy is also likely to enhance the effectiveness of the fight against trafficking. Currently very few of the trafficked persons are willing to report to the authorities and thus the traffickers can continue their activity with impunity. Victims' unwillingness to cooperate is partly due to current European policies, which have failed to ensure the trafficked persons a minimum standard of protection and assistance. By reporting to authorities, the victims will expose themselves to the risk of arrest, detention and expulsion. By giving testimony against the traffickers, the victims also increase the risk of reprisals without any guarantee of protection from the receiving state or from the state of origin.

In the current situation, it is no wonder why very few victims of trafficking consider pressing charges or acting as a witness as viable option. In order to effectively encourage trafficked persons to report to the authorities, they must know beforehand that they can rely on the state to provide longer-term assistance and protection. Under no circumstances should the safety of the trafficked person be subordinate to the needs of prosecution. Unfortunately this kind of protection is missing from almost all EU states.[41]

It is puzzling that the EU – an organisation that so often considers itself to be ethical voice in world politics – has been hesitating to give priority to protection and assistance of victims of human rights violations in this matter. Only very recently it has started to respond to the

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[40] "Report of the Experts Group on Trafficking in Human Beings."

[41] Italy is one of the few positive exceptions in this. In its report, the experts group gave a recommendation that in case there is a slightest indication that a person may be a victim of trafficking, a reflection period of no less than 3 months should be granted. In case the victim is identified as a victim, a temporary residence permit with the right to work should be granted for at least 6 months regardless of the victims willingness to cooperate with the authorities. The separation of the residency procedure from participation in criminal proceedings allows focusing on the trafficked person's needs, rather than the need to obtain evidence for the prosecution. Furthermore, following the temporary residence permit, trafficked persons should be entitled to a long term or permanent residence permit, either on humanitarian or refugee grounds or because they successfully have completed a social assistance programme and have found sustainable employment. It should also be ensured that trafficked persons who are granted a temporary or permanent residence permit should have the option to bring their children to the country of residence to see them in safe. Under the present situation this is almost never allowed.

criticism but very little has been achieved in practice to change the situation.[42] It seems that illegal immigration has become such a feared and securitised topic within the EU that it is failing to see human trafficking in its proper context and proportion.[43] Or perhaps, the EU is seeing the picture correctly but just failing to act because of lack of political will. The EU and its member states seem to prioritise national sovereignty over the needs of the victims of human trafficking.[44] A reason for current policy must be a somewhat absurd suspicion that more humane practices would attract floods of "willing victims". The present restrictive policies are at the same time unethical and a significant hurdle for the solving of the security threat of human trafficking.

6 Conclusion

Human trafficking is a major humanitarian problem and a source of regional instability. In order to fight human trafficking the EU and its member states need an integrated, multidimensional approach that combines migration management, economic and social assistance, border and law enforcement cooperation and the development of legal instruments and common standards. Purely exclusionist policies are unlikely to be efficient.[45] As long as the social and economic gap between the neighbouring states and the EU stays as deep as it is today, there will be a great many people eager to move from the outside into the EU area. There will be persistent pressure for economic migration at the EU's external borders.

Even if the EU understands the multidimensional character of the problem, it is seriously underperforming in two fronts when it comes to anti-human trafficking measures. First of all, it is failing in migration management and thus indirectly encouraging human smuggling and trafficking. Secondly, it is failing in providing protection to the victims of human trafficking which is unethical and strengthening the impunity of the traffickers. Both of these shortcomings of anti-trafficking policy are signs that the EU and its member states are in practice prioritising exclusionist, traditional sovereignty-based approach to new security

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[42] See *Commission Communication: Fighting Trafficking in Human Beings - an Integrated Approach and Proposals for an Action Plan*, 18 October 2005, COM (2005)514 final.

[43] On the topic of securitisation of migration in the European context, see Jef Huysmans, "The European Union and the Securitization of Migration," *Journal of Common Market Studies* 38, no. 5 (2000): 751-77.

[44] OSCE special representative on combating trafficking in human beings Helga Konrad at Building a Secure Neighbourhood Conference organised by the Finnish Institute of International Affairs in Helsinki, 21-22.10. 2005.

[45] For example, increasingly strict borders controls could in fact even widen the markets for criminal organisations because more professionalism is required to pass the controls.

threats despite the inclusionist formulations of its strategic documents. This is a response to the unfocused, general anxiety about frontiers so common in today's Europe.[46] It may be understandable but it does not address the root causes of threats and only helps in marginalising the outsiders. The world has changed and this kind of policy is doomed to inefficiency.

In essence, the EU has to choose between two approaches. Either it should conduct its relations with the outsiders like they were just that, outsiders, of a typical sovereignty-based security entity, or, it should build its relations on highlighting the fact that the EU does *not* fit the model of sovereign equality.[47] Ole Waever claims that the EU not a typical international security actor that is based on ideas of collective defence and collective security; nor is it just a group of states providing security simply through domestic policies. Waever believes that the EU is 'a post-sovereign security actor' with overlapping and unsettled authorities, asymmetries and non-like units.[48] This complex structure gives the relationship new potential: the overlapping institutions are more suitable for integrating outsider states and their citizens to the European security cooperation.

In the final analysis, security strategies depend on what is considered to be the end product of the European project. Is it some Westphalian state structure or is it rather some post-modern form of governance with more fluid, soft border zones that are able to accommodate and encourage interaction across borders?[49] From the security perspective, the worst case scenario would be that the feeling of marginalisation of outsiders leads to Europe with competing power centres (instead of Europe with concentric circles).[50] In such a case, the power centres would be fighting common threats separately and would thus be doomed to inefficiency. To avoid this scenario, an active construction of security communities through international political action is called for. A certain degree of integration based on the convergent identities and compatible visions of Europe and oneself as a nation/state/individual is needed for long-

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[46] Eberhard Bort, "Illegal Migration and Cross-Border Crime: Challenges at the Eastern Frontier of the European Union," in *Europe Unbound: Enlarging and Reshaping the Boundaries of the the European Union*, ed. Jan Zielonka (London: Routledge, 2002), 199.

[47] See Waever, "The EU as a Security Actor: Reflections from a Pessimistic Constructivist on Post-Sovereign Security Orders," 257.

[48] Ibid.

[49] Jan Zielonka, "How New Enlarged Borders Will Shape the EU?," *Journal of Common Market Studies* 39, no. 3 (2001).

[50] See Waever, "The EU as a Security Actor: Reflections from a Pessimistic Constructivist on Post-Sovereign Security Orders."

term stability and mutual trust.[51] A European wide security community would allow for comprehensive and integrated strategies to combat new security threats such as human trafficking. In an atmosphere of mutual trust security could be reconstructed as first and foremost human security.

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[51] See Adler and Crawford, "Normative Power: The European Practice of Region Building and the Case of the Euro-Mediterranean Partnership (EMP).", Waever, "The EU as a Security Actor: Reflections from a Pessimistic Constructivist on Post-Sovereign Security Orders."

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EU member states need to engage in a process of flexible solidarity that can shape the elements of a comprehensive migration policy: asylum regime, border controls, resettlement schemes, legal migration, and societal integration. EU members will have An approach focused too much on returns and readmissions risks being unable to convince Europe's partners to initiate true collaboration for lack of mutual trust. Introduction. Migration is a defining issue for the European Union (EU) and will remain so for a long time to come. Since 2015, it has taken up much of European leaders' time and figured preeminently on the agendas of all of their meetings. It has created deep divisions between them and shown the limits of their collective efforts. Balancing between inclusion and exclusion: The EU's fight against irregular migration and human trafficking from Ukraine, Moldova and Russia, London: London School of Economics. 6. United Nations High Commissioner for Refugees, UNHCR, 2012. Submission by the United Nations High Commissioner for Regugees, For the Office of the High Commissioner for Human Rights' Compilation Report- Universal Periodic Review: Malta. The eu fight against illegal migration and the eastward enlargement: To what extent is the eu policy on illegal migration consistent with the forthcoming eastward enlargement? Sarah Léonard. 3.6 Penalties against smugglers and traffickers of human beings Smuggling and trafficking of human beings are serious issues for all the candidate countries. An example of such an agreement is that concluded between Lithuania and Germany that allows the Lithuanian Police, Tax Inspectorate and Border Police to apply directly to the German law-enforcement institutions for information and assistance in crime investigation (European Commission, 2001a: 91).