Beyond the dichotomy between migrant smuggling and human trafficking: a Belgian case study on the governance of migrants in transit

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3 | How Useful is the Concept of Transit Migration in an Intra-Schengen Border Mobility Context?

Diving into the migrant smuggling and human trafficking nexus in search for answers

1   INTRODUCTION

Since the beginning of the Schengen Agreement in 1985, the right to free movement of people within the Schengen Area has been a source of both challenges and opportunities within the EU. The increased movement of people across borders has led to complex questions related to the perceived of erosion of sovereignty of nation states (see Dauvergne 2008). Then, the so-called European asylum and migration 'crisis' that drew global attention in 2015 triggered, among other things, reflections on external and internal border policing within and at the limits of the Schengen Area (Guild et al. 2015). According to the European Commission (2016), the absence of internal borders checks in the Schengen Area and its principle of free movement of people constitutes one of the most 'cherished achievements' of the EU. While this may be what the law states, this is not the case in practice, as both formal border controls (articles 24-26 Schengen Border Code) and informal border checks in border areas (article 23 Schengen Border Code) can be observed (van der Woude 2019). These (informal) border checks aim to prevent irregular migrants, including asylum seekers and refugees, from reaching their desired destination country, whether it is the United Kingdom or another EU country (see Paynter 2018).

As a result, it becomes apparent that specific zones within the Schengen Area are in fact becoming transit zones where irregular migrants are stranded for a variable period of time on their way to their desired destination country. This is, for example, the case in Calais (France), in the Maximilian Park (Belgium) and in Rome and Ventimiglia (Italy) (e.g., De Vries & Guild 2019; Tazzioli 2018; Paynter 2018). Policy documents from the Belgian national rapporteur (Myria 2020), long lasting journalist investigations (e.g., Loore 2018) and NGOs (e.g., Caritas 2019) often document the lives of irregular migrants having to stay for weeks or months in the Belgian capital, waiting for their chance to reach the United Kingdom. Going back to the story of Osman (see Introduction), who finds himself in the area of the North Station in Brussels and, together with other individuals sharing similar circumstances, plans to leave the area each night to reach motorway areas (see Loore 2018). Once there,

with or without the services of migrant smugglers, depending on the resources available to him, Osman will climb and hide in (sometimes refrigerated) trucks, hoping to reach the UK. If he is caught and stopped during his journey, he will then go back to the Maximilian Park trying his luck in the next days/ weeks/months. While the national rapporteur (2020) acknowledges that someone can reside in a transit space in a legal manner, for example when such a person has lodged a demand for international protection, the focus of this chapter will be solely on individuals in irregular situations in the Schengen Area. As the NGO Caritas (2019) explained, individuals in irregular situations, such as migrants waiting in the Maximilian Park, often face two choices to survive: to depend on networks of solidarity established and acting in the territory or to work in the black economy. The latter can lead to abuses and at times human trafficking when greedy employers take advantage of the vulnerable situation of people like Osman, especially if their financial resources dried up along the way (Caritas 2019). If Osman lacks financial resources to pay a migrant smuggler, he can resort to two other options as Loore (2018) thoroughly documented. He can either work for a smuggling organization himself as a first line worker who spots and opens the trucks in exchange for a reduced fee or a free pass to the UK in the future (Hardt 2019), or he can copycat the tactics of smugglers and attempt to reach the UK on his own (Loore 2018).

The story of Osman brings to the foreground the concept of 'transit migration', which sheds light on the stranded and vulnerable conditions of individuals on the move. The concept is currently scarcely used in the context of mobility within the EU (e.g., De Vries & Guild 2019), let alone within the supposedly borderless Schengen Area (see van der Woude 2020 on the many borders that are in effect within the Schengen Area). Indeed, literature on transit migration focuses predominantly on the peripheral zones of the EU (e.g., Düvell 2012; Collyer et al. 2014; Sørensen 2006). Yet, it has been increasingly highlighted that limiting legal migration channels and increasing border checks, also Intra-Schengen checks, leads to a fragmentation of the migration journeys of irregular migrants who are inside of the EU (e.g., UNHCR 2016; Mijatovic 2019; De Vries & Guild 2019). Consequently, the vulnerability of irregular migrants can potentially rise substantially in these inter-EU transit spaces. As illustrated by Osman's story, the vulnerable position in which some migrants transiting throughout EU territories can lead them to resort to professional networks of migrant smugglers, increase their debts, and incite them to accept (temporary) work in exploitative conditions to continue their journeys etc. (e.g., Bridgen & Mainwaring 2016, Triandafyllidou 2018; O'Connell Davidson 2016). As outlined in the Introduction (see Chapter 1), the adoption of the United Nations Convention against Transnational Crime (UNTOC) and its two addi-

tional protocols (hereafter Palermo Protocols)[1] in 2000 produced a strict legal dichotomy between migrant smuggling and human trafficking (see Gallagher 2001; Hathaway 2008). As a result, the established legal categories trigger substantially distinctive protective regimes to either the 'worthy' human trafficking (ideal) victim or the undeserving 'culprit' smuggled individual (Dauvergne 2008; Kemp 2017; Baird 2016).

The main goal of this chapter is to answer the second sub-question of the dissertation, which is phrased as follow:

> *Can the contested concept of transit migration be considered useful in shedding light on the blurred area found at the nexus between migrant smuggling and human trafficking?*

Considering the geographical focus of the dissertation and the main research question which seeks to examine how an alternative approach to the strict legal dichotomy established between migrant smuggling and human trafficking affect the governance of transit migration, the (scholarly) discussions on the grey area between the two phenomena are essential to underline. By exploring the scholarship that discusses the 'grey area' located in-between prototypical cases of human trafficking and migrant smuggling, this chapter will shed light on the vulnerable positions of individuals 'stranded' (for a definition of stranded, see Section 2) or stuck in motion in transit zones. These vulnerabilities to exploitation and abuse also result from the increased fragmentation of the migration journey within the Schengen Area. The blurry lines that are generally observed by the scholarship between the two phenomena are likely to be further enhanced in transit spaces where individuals who aim to continue their migration journeys are stranded for undetermined periods of time. Hence, the concept of transit migration helps to critique the conception of migrant smuggling and human trafficking being strictly separate phenomena.

After a brief explanation of the research methods and approach underlying this chapter (Section 2), the concept of transit migration in an Intra-Schengen mobility context will be explained (Section 3). Then, after a summary on the main differences between human trafficking and migrant smuggling, their points of intersection commonly identified by the scholarship will be highlighted (Section 4). Subsequently, the representations and stereotypes generally attached to these phenomena will be deconstructed (Sub-sections 5.1 and 5.2).

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1   The objective of the article is not to repeat the main differences between the two crimes and the debates around the adoption of the UNTOC and its additional protocols as many authors have already tackled the issue in a very insightful and thorough manner. See the articles of Gallagher (2008, 2010), Hathaway (2010) and Campana and Varese (2015), summarizing the distinct doctrinal opinions on the topic. See also the two relevant Palermo Protocols: UN the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the UN Protocol against the Smuggling of Migrants by Land, Sea and Air.

Since dealing with these two phenomena often intersects with issues of ir-regular migration, the potential instrumental use of the 'fight against human trafficking and migrant smuggling' by nation states to advance their agenda in preventing irregular migration will be underscored (Sub-section 5.3). In the discussion section, the concepts and findings will be connected and the useful-ness and potential limitations around the use of the concept of transit migration will be discussed.

2   APPROACH AND METHODOLOGY

The moderate social constructivist approach framed by Mertz (1994) serves as a background for this socio-legal chapter. Following this approach, it becomes apparent that laws are social constructions (*ibidem*). Therefore, as Calavita (2010) argues (see Chapter 1), care should be taken to not have an 'idealized' vision of the law as the latter is after all a 'human artefact' (3). Numerous scholars such as Giddens (1999), Bauman (2000) and Beck (1992) have shed light on the tremendous changes in modern societies and the diverse and complex issues resulting from them and the tasks left to nation states in intervening to regulate these difficult matters. Among these difficult matters, migration related issues such as migrant smuggling and to a certain extent human trafficking can be said to be complex to regulate in a globalized world (Franko 2017, see also Chapter 1). Van der Woude (2016) noted that a flexible approach is required to deal with modern complex societal issues when discussing the concept of discretion (see also Chapter 1 and Chapter 5). While discretion is neither good nor bad in the sense that it can either lead to abuse or to positive results (see Weber 2003), it is nevertheless important to acknow-ledge its existence. Discretion can both be found at the implementation level but also in the law-making process (Schneider 1995). Schneider (1995) explained that discretion was created by law and policy makers for diverse reasons; for example, where no consensus is reached by lawmakers who then pass on the responsibility to the decision makers, or when scenarios are too complex or messy to allow for clear rules (see also Weber 2003). The laws and regulations adopted to deal with both human trafficking and migrant smuggling and the distinction created between them can also be seen as a result of the fact that law cannot encompass an indefinite number of scenarios and is based on a construction of 'false/constructed' realities or 'truths'. Hence, regarding the grey zone found at the nexus between migrant smuggling and human trafficking (see Section 4), it is not only the implementation of the international and regional legal instruments that will be challenged. The chapter will also focus on the manner the rules themselves are constructed and the substantial room for interpretation left to decision makers when dealing with the pheno-mena.

This chapter builds on two distinct literature reviews, gathering critical and empirical scholarship from a diverse range of disciplines such as law, sociology, critical criminology and geography. The first review includes 58 peer-reviewed articles from 1980-2019, collected from 3 databases (Web of Science, Google Scholar, Criminal Justice Abstracts), as well as specialized journals in human trafficking/smuggling, (irregular) migration and additional referral sampling. The selection was based on articles that assess transit migration, human trafficking and migrant smuggling both critically and broadly. Particular attention was devoted to theoretical description of the phenomena, policy practices, law-making, studies tackling stereotypes and common representations attached to them, as well as the points of intersection between the phenomena. The selected articles were subsequently summarized and coded manually. The chapter is part of a broader research project, 'Dealing with human trafficking and migrant smuggling in Intra-Schengen border mobility context', which is partially financed by the National Dutch Police. Its aim is to better understand the phenomena of human trafficking and migrant smuggling (see European Border Communities website[2]). Within the project's framework, a systematic literature review was conducted between September 2017 and September 2018 and includes 181 articles and books, selected based on the following inclusion criteria: 1) published after 1997 (Treaty of Amsterdam); 2) published in English; 3) contained research related to human trafficking and/or migrant smuggling, irregular migration; facilitation of entry/ movement/transit; 4) focused on the EU, its member states and/or focused on movement towards the European Union; and 5) was empirically grounded except for material which proposes a model for analysis. The initial process of data collection, methods and databases involved the same tools and techniques mentioned above. For the systematic literature review, material which met all the inclusion criteria was selected and coded using qualitative data analysis software (ATLAS.ti). In total, 86 of the 181 articles and books which were coded had material relevant to answering the research question and included excerpts which appeared in the query reports. Regarding the analytical stage, a content analysis was done by creating code groups representing the concepts outlined at the end of the introduction. The coded quotes that came from the two literature reviews were extracted and organized based on the different themes mentioned supra and analysed with specific attention given to the political discourses on migrant smuggling, human trafficking, and the links between them as presented in the analysed literature.

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2   https://europeanbordercommunities.eu/research/combatting-human-trafficking-and-human-smuggling-in-intra-schengen-border-areas

3   TRANSIT MIGRATION IN THE INTRA-SCHENGEN MOBILITY CONTEXT

3.1   Transit migration: a difficult concept to define

The concept of transit migration is not novel and has been used in distinct
contexts throughout the years. Retracing the genealogy of the term, Collyer
et al. (2014) observed that since the 1990s, the term has been almost exclusively
used in policy documents as a way to describe irregular migratory movements
(or desired movements) towards the EU and more specifically to refer to
individuals stranded in so-called 'buffer zones' at its external borders. There
is no agreement on the definitions of the broad terms 'transit migration' or
'transit migrant', which can explain why they have become connoted and
politicized, particularly to discursively equate them with irregular migration,
organized crime and migrant smuggling (Düvell 2012). Transit migration can
be seen as a blanket term devoid of legal meaning that can cover an array
of migration categories and legal statuses: from mixed migration (encompass-
ing, among other things, refugees, asylum seekers, economic migrants) to
(irregular) secondary movements (Sørensen 2006). In this chapter and building
on the contributions of Schapendonk (2012: 579) and Carling (2002) on the
transit migration debate, 'transit migration' will be used to refer to 'a phase
of experienced immobility in process of movement in a specific migratory
direction'. Both scholars refer to the 'migrant's aspirations of moving in a
context of involuntary immobility' (Schapendonk 2012: 579). This definition
has two advantages. On the one hand, it can be used in an Intra-Schengen
context as experiences of immobility can be experienced within the EU territory
(see 2.2). On the other hand, the definition makes it possible to consider the
multiple change of plans during the migration path and breaks the assumption
that there is always a fixed settlement at the end of the journey. It is equally
important to define with precision what is meant by 'stranded' to avoid further
confusion. By stranded, the chapter builds on the definition of Schapendonk
(2012) developed to describe migrants experiencing 'a sense of immobility in
the direction of the EU' in the sense that EU borders are 'blocking their onwards
movements' (580). This definition will also be used in the Intra-Schengen
context where border checks (e.g., van der Woude 2019) and governmental
practices policing migrants (e.g., Tazzioli 2019, Edmond-Pettitt 2018b) are
experienced by migrants as obstacles to the continuation of their journey, either
to other EU countries or to the UK.
        Since 2014 and 2015, it has been increasingly recognized that the label
'transit migrant' has been used by the media in several Member States to

describe an individual present inside the so-called 'borderless' Schengen Area.[3] From a policy perspective, the term 'transitmigrant/transmigrant' made its appearance in 2015 in the Belgian policy, media, and governmental arenas to depict 'a migrant or illegal migrant from Africa and Asia who wishes to go to the UK and stays on the Belgian or the French Northern coast in the meantime' (see Flemish dictionary 2016; for a critical reflection see Chapter 1, Section 5 on terminology). Following Collyer et al. (2014) and Düvell's (2012; 2014) opinions, caution must be taken regarding the problematic politicization of the term 'transit migration'. The term should not be used as a way to label individuals on the move, as they can belong to distinct categories: refugees, asylum seekers, potential victims of human trafficking, etc. As it will be argued in the following sections, despite the risk of the politicization of the concept transit migration, the term as defined above, helps to shed light on the vulnerable situations faced by stranded migrants both inside and outside of the Schengen Area. Moreover, the living conditions and the particular vulnerabilities of individuals living in transit spaces can have an impact on the study of migrant smuggling, human trafficking and their intersection.

3.2   On the presence of transit zones within the Schengen Area

Papadopoulou (2004) described the transit migration phenomenon in Greece when she referred to individuals residing temporarily in a 'waiting room' in the strategic 'Schengenland' (168, 169). In 2010, Perrin specifically wrote about the Schengen Area in his study aimed at identifying key characteristics of transit countries, such as their specific geographical location and the liberal immigration policies in place. Following the ethnographic research of Paynter (2018) on 'transit migrants' (*transiti migranti*) in Rome, the transit migration concept is useful to refer to waiting zones in which individuals are located in limbo with the intention of continuing their migration journeys at a later stage. In their insightful contributions, Düvell (2012; 2014) and Sørensen (2006) explicitly link the restricted legal migration channels available to so-called transit migrants and the stranded conditions that they can experience en route. The increased securitization of the migration path to the EU also explains how migration journeys become longer and more perilous (see also Brunovskis & Surtees 2019; Bridgen & Mainwaring 2016; Triandafyllidou 2018; Sanchez 2017; Hynes 2017; Carling, Horwoord & Gallagher 2015). The 'trajectory ethnography' conducted by Schapendonk (2018) on the im-/mobility of African migrants on their way to the EU and the distinct migration regimes imposed

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3   The term 'transmigration', '*migrante en transito*,' is often used in this particular context in national newspapers in some EU member states. See for example, for Spain, *El Confidencial* (2019) and the Basque Radio Television EiTB (2018); for Belgium, *le Soir* (2018) and *de Standaard* (2019).

on them puts into question the 'linearity' of migration journeys. Irregular migrants might have to stay longer than expected in some places, sometimes detained, and deported and/or work in the shadow economy to finance the rest of their journeys (Kemp 2017).

As mentioned, Collyer et al. (2014) believed that the concept of transit migration was mostly relevant to describe the situation at the outskirts of the EU borders for several reasons. The authors stated that once a migrant reached the EU, his/her status as a 'transit migrant' would not differ from any other irregular migrant present in the EU territory. According to them, once in the Schengen Area, the means of entry become legally irrelevant (see Dublin Regulation). This chapter argues the opposite and believes that the concept of transit migration, linked with or deriving from the increasingly restrictive border regime and the fragmentation of the migration journey, is crucial to describe both the situation at the external EU border as well as the situations in which migrants can find themselves while they are within the EU territory and in particular within the Schengen territory. The presumed absence of EU border checks within the Schengen Area (van der Woude 2019) makes the stranded situation of migrants even more odd.

Interestingly, despite the hesitation of the authors to use the concept of transit migration in an Intra-Schengen context, Collyer et al. (2014; 2016) acknowledge the historical tradition of several EU countries that served as transit spaces, as well as the challenging developments observed in Ventimiglia (Italy) since 2011 and more recently in the region of Calais bordering the UK. The authors described these spaces of transit as 'bottlenecks', particularly in Southern European countries and in places bordering the Schengen Area, such as Calais. Schapendonk (2012) also referred to the precarious living conditions of migrants who just made it to southern European countries, such as Greece and Italy. This, along with the instability of their administrative status as well as their living conditions, which were detrimental in their desire to continue their migration journey or to go back to their country of origin, makes it possible to situate their experiences within the concept of transit migration. The recent studies of Tazzioli (2018; 2020b) portray distinct zones inside the Schengen Area where migrants end up stranded. The stranded conditions experienced by migrants challenges the idea of 'the free internal mobility practices' that is not only the result of the recent reinstallation of national border controls (see also van der Woude 2019; Guild et al. 2015). More specifically, Tazzioli's (2018; 2020b) ethnographic work conducted at the French/Italian and Italian/Swiss borders and in Calais (France) describes somewhat more concealed governmental strategies than the reinstallation of border checks. The strategies in place aimed at disrupting migrants' journeys by constantly diverting them from sensitive border zones. What Tazzioli (2018) coined as 'governing through mobility' can be seen as a deterrent and disruptive (administrative) strategy adopted to regain control over migrants' mobility by lengthening their migration journey. These border control methods contribute to

the stranded condition of irregular migrants by forcing them to continuously be on the move throughout the territory to avoid the creation of new 'jungles of Calais'. Edmond-Pettitt (2018b) further wrote about these operations of 'dispersal' in her article on the policy of 'hostile environment' in Calais (see also Collyer 2016). The empirical research of De Vries and Guild (2019) on 'spaces of transit', which includes places inside the EU, such as railway stations and semi-permanent camps such as Calais, coined the term 'politics of exhaustion' to describe a similar migration management strategy. This type of action, therefore, enhances the fragmentation of the migration journey. Focusing on the French/Spanish and French/Italian border zones, Barbero (2018), Barbero and Donatio (2019) further observed an internal outsourcing of border control responsibilities, particularly to peripheral states of the EU, supposedly considered to be the 'guardians of the EU'.

4 BLURRY LINES: REFLECTION ON THE NOTIONS OF CONSENT/AGENCY, EXPLOITATION, AND DEBT

4.1 Law in the books: on the strict distinction between human trafficking and migrant smuggling

The adoption of the UNTOC and the Palermo protocols[4] produced a strict dichotomy between migrant smuggling and human trafficking. As the name of the UNTOC clearly indicates, Convention against Transnational Organized Crime, human trafficking and migrant smuggling are dealt with through the spectrum of international cooperation and border control, as they are perceived as forms of organized crime resulting from globalization (Chacon 2010; Shelley 2010; Mitsilegas 2019). Within the EU and the Council of Europe, this organized crime approach was made less severe for the case human trafficking, at least in theory, by combining it with a more protective human rights approach (Rodriguez-Lopez 2018). Nevertheless, the demarcation line between the two crimes is maintained, which triggers a reflection on what Dauvergne (2008) described as the 'all-important front in the battle for sovereignty and the nation state' (70). The (unwanted) migration flows that have arisen out of globalisation as well as the transformation of the nation states (see in that regard Sassen 2006) are important factors to understand the emergence of the Palermo Protocols (Dauvergne 2008). Dauvergne (2008) noted that as migration flows are perceived as threat to states' sovereignty, the protocols were useful to determine individuals worthy of being admitted to the polity (see also Aas 2011 on borders and sovereignty). And as controlling the mobility of indi-

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4 See the two relevant Palermo Protocols: UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the UN Protocol against the Smuggling of Migrants by Land, Sea and Air.

viduals is one of the tools of expression of state sovereignty, the distinction between migrant smuggling and human trafficking, which does not necessarily reflect the blurry reality, is said will help maintain the frontier between 'us' and 'them' (Dauvergne 2008; Haynes 2009; Skilbrei & Tveit 2008; van Liempt 2011; Dandurand & Jahn 2019). This is particularly true when migration related issues are being increasingly securitized (Mountz & Hiemstra 2014).

To summarize, the presumed major differences between migrant smuggling and human trafficking are the following: presence/absence of consent, the purpose of exploitation, the length of the relationship between the trafficker/ smugglers (temporality),[5] the necessary presence of a cross-border dimension for migrant smuggling and the distinct interests protected, namely the protection of the human rights of the trafficked victim and the protection of the State's interest in controlling its migration flows, respectively (Salt & Stein 1997; Gallagher 2009; Campana & Varese 2016; Hathaway 2011; see also the European Commission website 'trafficking explained'). While the majority of academic, media and governmental outputs fit exclusively within one of these two categories, a growing part of the scholarship questions the operability of the definitions and the extent to which the definitions reflect the experienced reality (e.g., Baird 2016; Dandurand & Jahn 2019; Munro 2006). According to Baird (2016), the study of human trafficking and migrant smuggling has been uncritically and problematically aligned with the strict legal categories established since 2000. The legal dichotomy and the resulting legal categories overlook the empirical evidence showing that both can be intertwined in a grey area and prevents a thorough understanding and comprehension of the phenomena and the dynamics in play between them. As Kemp (2017) explained, the blind reproduction of this fabricated distinction could reproduce the common discourses around the guilty accomplice migrants and deserving/ underserving victims of human trafficking. The main controversy concerns the notions of consent/agency, exploitation and debt and the dynamics existing between these three elements. The following sub-section will shed light on the main areas of discussion that question this neat line of demarcation between the two crimes. Besides, explaining the concept of transit migration can be useful to bring more awareness to the vulnerabilities of individuals in transit spaces. This is important as the grey area identified between migrant smuggling and human trafficking is also likely to be found and bolstered in transit spaces.

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5   It is assumed that the relationship between a migrant smuggler and his/her client ends at the arrival of the migrant in the country of destination or at the location previously agreed upon while, as the research shoes, the relationship between a trafficker and his/her victim is further continued in the country of destination with the exploitation dimension (see European Commission website: « Trafficking explained ».

4.2   Law in action: when exploitation, consent and debt complicate the dichotomy

Many scholars share the opinion that while human trafficking and migrant smuggling can be easily differentiated in the books and that the definitions appear logical from a legal perspective, it is not always easy to make a distinction between the two phenomena in practice. They are perceived either as being intertwined or as forming a continuum (e.g., Dimitriadi 2016; van Liempt 2011; Salt 2000; Derluyn & Broekaert 2005). Gallagher (2001) skeptically discussed the fact that the Palermo Protocols did not consider the operational links existing between both phenomena in practice. Like many other authors cited in the following sentence, Gallagher (2001) illustrated her argument through an analysis of the vast majority of cases in which migrants start their migratory journey voluntarily to end up in a situation of exploitation or abuse either en route or in the country of destination. This situation is caused by their vulnerable position, sometimes resulting from the heavy travel debt to be repaid (see also Carling, Horwood & Gallagher 2015; Munro 2006; Aronowitz 2009; van Liempt 2011). According to Dauvergne (2009),[6] Kemp (2017) and Dandurand and Jahn (2019), the 'false dichotomy' between migrant smuggling and human trafficking boils down to the complex notions of consent. According to van Liempt (2011), the dichotomy exists to facilitate the practitioner's discretionary task to decide who deserves protection and who does not. There is an assumption that an individual will either exercise full agency and have complete control over his migration path or will be forced/coerced to migrate to end up in a situation of exploitation. Yet, empirical findings show that the bulk of human trafficking and migrant smuggling cases hardly fit the prototypical categories and falls in an in-between grey area where traces of exploitation and abuse can be found and where the absence and presence of full or partial consent coexist (e.g., Kemp 2017; Munro 2006). Research has also illustrated that migrant smuggling victims can, at times, be in full control of their migration paths whereas they, at other times, choose to relinquish their agency (temporarily) to the hand of the human smugglers. This is done, it is argued, as a strategic move in their quest for a better future; it can involve high danger and possible exploitation to various degrees (Bridgen & Mainwaring 2016; Sanchez 2017; van Liempt 2011).

From a strict legal perspective, it is true that the Palermo Protocol (and the relevant European legal instruments on the matter[7]) considers that consent in human trafficking cases involving adults should be deemed irrelevant when achieved through threat, coercion, fraud, deception and abuse of power or abuse of vulnerability. The issue paper of the UN (2012) regarding the abuse

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6   For concrete examples and cases falling in the 'in-between' area, *see* Dauvergne (2008, 80-90).
7   See the EU Anti-Trafficking 2011/36/EU and Council of Europe Convention on Action against Trafficking in Human Beings (16 May 2005) as well as the Warsaw Convention.

of vulnerability criteria described the latter as less tangible than the other means mentioned above. The document (UN 2012) also pinpointed that the unclarity of the definition made room for ambiguities. Indeed, the abuse of a situation of vulnerability is described as 'any situation in which the person involved has no real and acceptable alternative but to submit to the abuse involved' (UN 2012: 3). This definition creates confusion for practitioners and allows nation states to have either a broad or as in many cases a narrow understanding of the term, which is unlikely to encompass topics such as poor socio-economic condition, family pressure or the lack of opportunity in the country of origin (UN 2012; see also Munro 2006). As an illustration, France, despite a recommendation of the Group of Experts on Trafficking on Human Beings within the Council of Europe to do otherwise, provides an exhaustive list of situations of vulnerability which does not contain social, administrative, or economic vulnerabilities (see GRETA 2017b).

Mai's (2016) study about Nigerian sex workers in France and the UK illustrates the ambiguity around the notion of consent. Contrasting with the common narrative on sexual exploitation, Mai (2016) found out that the majority of the sex workers interviewed chose to do sex work and justified it by their lack of legal status and their economic problems. The minority of sex workers who felt forced to perform sex work named the two same problems as factors underlying their situation (see also Andrijasevic 2010). Kemp (2017), who researched both labour and sexual exploitation among African irregular migrants marginalized and excluded from the legal economy in Malta, confirmed this finding. The rationales behind their choice were the need to repay a previous travelling debt, sending remittance to their home countries or collecting more money to pay human smugglers to continue their journeys towards other EU countries. Quoting a UK police officer in the research performed by Munro (2006), 'I've never found women chained up … but there are a whole series of other control factors, which mean that escape or running away isn't really an option' (328). Haynes (2009) further questioned the value of consent when the latter is likely to emanate from despair. This is particularly true when thorough discussions on power imbalance in a complex migration context were not tackled by lawmakers. It is safe to say that migrants' consent as the means to distinguish human trafficking and migrant smuggling, as highlighted in many policy documents (e.g., UNODC website "Differences and Commonalities"),[8] is under serious criticism and can at times show the futility of the 'free/forced neoliberal north-centric dichotomy' (Mai 2016: 6).

O'Connell Davidson (2006; 2013) reflected on the post-Enlightenment liberal tendency to perceive realities in a binary manner. Regarding issues around migration, this binary thinking results in building the clear demarcation lines highlighted above. The author (2013) strongly criticized this tendency and

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8   See https://www.unodc.org/e4j/zh/tip-and-som/module-11/key-issues/differences-and-commonalities.html

explained how debt-financed migration muddled with the assumption of neat dual realities.[9] While contracting a debt with a human smuggler can result from an active and strategic choice to achieve a safer future, the voluntariness of it is questionable. This is due, notably, to increasingly restrictive border policies and the social exclusion that migrants can face. The debt will also place the individuals in an unbalanced power dynamic, sometimes for years, but not necessarily for an indefinite period of time. This power dynamic will enhance their vulnerability and heighten the risk of exploitation, either *en route*/transit or in the country of destination (Joniken 2016; Skilbrei & Tveit 2008). O'Connell Davidson (2013) therefore suggested to replace the liberal 'freedom versus slavery' dichotomy with 'citizenship versus slavery', as she observed that non-citizen debtors did not have their rights and freedom protected by the State and were subject to an exclusion clause in society.

Already in 2011, before the migration 'crisis' of 2015, a report from Europol (2011) identified 'a point of contact' between human trafficking and irregular immigration due the fact that 'transiting migrants were frequently exploited in illicit labor', which results from the fragmentation of the journey (22). Linking it back to the concept of transit migration and the situation of individuals stranded in transit spaces aiming to continue their journey onwards, the grey zone identified between migrant smuggling and human trafficking by scholars appears even greyer. Indeed, the blurred area found at the nexus between the two phenomena involves an interplay between facilitation, exploitation, extortion, debt bondage as well as the simultaneous presence and absence of full and partial consent (see Carling, Horwood & Gallagher 2015; Peterka-Benton 2011). When individuals get stuck in so-called transit zones, their vulnerability to exploitation and abuse is likely to be enhanced (Brunovskis and Surtees 2019). Their quests for further mobility may compel them to seek the services of (more professionalized) migrant smugglers, which can reinforce the debt and lead to potential (short-term) exploitation explained above (see Sanchez 2017; Trandafyllidou 2018; O'Connell Davidson 2017b; Andersson 2016). Moreover, as will be further developed in the following section, numerous scholars (Lucht 2013; Zangh et al. 2018; Richter 2019) also examined the involvement of migrants in smuggling operations and the social embeddedness of the smuggling process. Brunovskis and Surtees (2019) further noted that this particular involvement can be considered as human trafficking as migrants can at times be coerced or have no choice but to take part in these unlawful activities. Despite the existence of non-punishment clause in both Palermo Protocols and in the relevant European legal instruments (see Chapter 2, Section 2), they are often really difficult to use in practice (e.g., Villacampa & Torres 2019).

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9   See the full article for an in-depth analysis regarding the liberal understanding of freedom versus slavery and the role of debt in the latter.

Dandurand and Jahn (2019) denounced the exclusive attribution of victim-
hood to human trafficking victims in the current mixed migration context.
The authors (2019) pointed out the trouble in identifying signs of deception,
exploitation, and abuse when distinct categories of migrants are on the move
between countries. It appears clear that the dichotomy is based on a simplified
and at times erroneous representation of the reality experienced by migrants.
If the sharp demarcation lines designed by lawmakers facilitate the task of
practitioners in sorting the guilty smuggled individual from the innocent
human trafficking victim, it makes it hard to provide a legal response to the
multitude of scenarios situated in the blurry area involving different types
of victims and degrees of agency and victimization.

5   THE IMPACT OF STEREOTYPES ON POLICYMAKING AND IMPLEMENTATION

The distinction between human trafficking and migrant smuggling is also
enshrined in strong gender and sexual stereotypes as well as ideologies.
Women and children have higher chances of being identified as victims of
human trafficking as long as they fit the prototypical profile of a pure and
innocent victim devoid of agency, while men, who are generally perceived
as economic migrants fully in control of their journey, will be commonly
identified as smuggled individuals (van Liempt 2011). In this section, the
common stereotypes and typical representation regularly identified in the
critical scholarship attached to both human trafficking (5.1) and migrant
smuggling (5.2) as well as the potential issues resulting from their conflation
(5.3) will be addressed. Kinney (2015) explained how stereotypical narratives
on issues such as human trafficking could shape policies and affect their
implementation on the ground. As Wilson and O'Brien (2016) noted, a policy
never arises from an external reality and the way migrant smuggling and
human trafficking are framed is also politicized, which can in turn shape the
solutions introduced to deal with them, sometimes in an instrumental manner.
As the phenomena and their potential intersection are often represented in
an overly simplistic fashion, the consequences of victim identification and
subsequent protection, as well as of the investigation and prosecution, are
severe (e.g., Carling 2017; Chacon 2010). In the EU context, these framings can
be damaging, as the legal frameworks in place to tackle both human trafficking
and migrant smuggling share a border control approach, as they are intrinsical-
ly linked with 'the fight against irregular migration' and transnational organ-
ized crime (see Spena 2016 for migrant smuggling and Rubio-Grundell 2015
for human trafficking). In each sub-section, the common representation attached
to both human trafficking (5.1) and migrant smuggling (5.2) will be identified.
The aim is to shed light on the side-effects and to a certain extent the instru-
mental use of common narratives (5.3) and assess their potential consequences
for individuals stranded in transit spaces.

5.1   The prototypical construction of human trafficking victims and villains

The troublesome assumptions about consent and agency examined above (3) already revealed one of the core stereotypes about the prototypical human trafficking victim and created a distinction between the deserving and underserving victim who consented or who is complicit in their own exploitation (Rigby 2011). The empirical research conducted by Ventrella (2017) in Italy, by Lavaud-Legendre (2017) in France, and by Constantinou (2013) in Cyprus clearly illustrate that the victimhood of an individual will become questionable once vague signs of consent appear, as well as in cases of sexual exploitation where a division between 'good' and 'bad' victims is made. There are numerous studies mentioning the problematic and predominantly gendered construction and representation of the 'ideal' victim. The latter is often imagined as a pure, innocent, passive, worthy female who is (physically) kidnapped to be sexually exploited (Brunovski & Surtees 2008; Jacobsen & Skilbrei 2010; O'Brien 2016; Hoyle et al. 2011).

The frequent emphasis on physical and crude violence that victims of human trafficking are deemed to experience can lead to the disregard of (deceived) individuals in situations of exploitation who did not endure physical and/or sexual abuse (Maroukis 2017; O'Connell Davidson 2017b). Yet, the majority of cases do not necessarily involve physical violence, as forces leading to the exploitation of an individual are often complicated to identify (Frangež & Bučar Ručman 2017; Skilbrei & Tveit 2008). The study of Leser et al. (2017) with German practitioners illustrates how these common narratives on the 'ideal victim' fail the to reflect the situation on the ground. According to the practitioners interviewed, many expressed their difficulties in finding 'a proper victim' and alluded to the blurry lines around the notion of consent and the difficult differentiation between a forced worker and a migrant worker. The authors (2017) concluded that if victims did not show themselves as 'worthy of compassion', they would likely be ignored or criminalized, as potential victims of human trafficking can quickly metamorphose into irregular migrants (see also van der Leun & van Schijndel 2016).

In her study combining the most common stereotypes on human trafficking, Rodriguez-Lopez (2018) confirmed the abovementioned issue and critically reflected on the over focus on sexual exploitation in comparison to labour exploitation. Despite the increased awareness towards labour exploitation, the lack of assistance for potential vulnerable male victims of labour exploitation was confirmed by the Group of Experts on Human Trafficking within the Council of Europe (GRETA 2018). Likewise, Heemskerk and Rijken (2011) observed that practitioners considered sexual exploitation as a more serious problem than labour exploitation. Similarly, the clear over focus on sexual exploitation in comparison to labour exploitation is also reflected in the scholarship (van Meeteren & Wiering 2019).

Rodriguez-Lopez (2018) further identified the troublesome association of human trafficking with irregular migration and the treatment of human trafficking as a pure (transnational) organized crime problem with 'ideal' deviant villains in charge, predominantly men of colour (see also Chacon 2010; Kemp 2017). The consequences of oversimplifying the reality are the following: first, the threshold to attain the victimhood understood in a narrow manner will be presumably unreachable. This is particularly troublesome for individuals stuck in transit zones in blurry (temporary) exploitative/consensual scenarios, who will be more likely to be recognized as guilty or complicit irregular smuggled individuals. Second, even if the EU adopted a more holistic approach, including human rights concerns towards human trafficking, the latter phenomenon is still treated as a transnational organized crime problem (Rubio-Grundell 2015; Rodriguez-Lopez 2018). As O'Brien (2016) and Chacon (2010) rightfully analysed, this lens will feed and legitimize policies oriented to increase border control. The predominant focus in anti-human trafficking policies on a special kind of villain preying on passive and 'blameless' victims is obscuring the responsibility of the nation states. Indeed, nation states are increasingly limiting legal migration channels and creating or reinforcing therefore the vulnerability of people on the move to smugglers and human traffickers. More generally, the recurrent silence on structural factors is considered dubious, as it can heighten the risk of exploitation, especially at the nexus between migrant smuggling and human trafficking (Kemp 2017; van Liempt 2011).

5.2   The prototypical construction of the evil ruthless human smuggler part of an organized crime group

It is certain that both human trafficking and migrant smuggling are hidden phenomena that are difficult to research. The scarcity of information also concerns secondary migration movements inside the Schengen Area where the options to cross borders are more diverse (e.g., hidden trucks, public transportation, small boats in the North Sea). A report of the International Organization for Migration highlighted this specific knowledge gap vis-à-vis the scale of the smuggling phenomenon and its interconnection with human trafficking within the EU (McAuliffe & Laczko 2016). The phenomenon also suffers from stereotypical representations painting images of ruthless, profit-driven and hyper-hierarchical organized crime structures (e.g., Triandafyllidou 2018; van Liempt & Sersli 2013).

While there are indicators that the smuggling journey can become increasingly expensive, dangerous, and violent at the outskirts of Fortress Europe, this specific representation is strongly nuanced by the empirical scholarship (van Liempt 2016; Sanchez 2017; Achilli 2015). Perkowski and Squire (2019) collected 250 narratives of smuggled individuals and explained how, from

their perspective, there was no such thing as a homogenous prototypical 'villain' smuggler. Migrants often considered smugglers as facilitators, helpers, saviours or as the necessary alternatives, who are neither good nor pure evil (e.g., Achilli & Sanchez 2017; van Liempt 2007; Mandic 2017). The sprawling organized crime narrative is also severely put into perspective as the majority of the scholarship paints a more diverse picture and agrees on the existence of loose and flexible smuggling networks constituted by interchangeable local/ regional opportunists with precise and distinct tasks, but devoid of mafia-like bosses (Demir et al. 2017; Mitsilegas 2019; Staring 2004). As mentioned above (3), Richter (2019), Lucht (2013) and the insightful contributions found in the special issue edited by Zangh et al. (2018) deconstructed the image of the profit-driven migrant smuggler operating within a hierarchical and structured organized crime group by pinpointing the involvement of migrants themselves in smuggling operations. The latter can at times become more socially embedded and crossing borders can turn into a currency in certain transit spaces, where migrants see a business opportunity to help others in their migration journey. Triandafyllidou (2018) wrote about complex systems existing based on pre-existing local and regional community relationships, trust, information, interdependency, and profiteering. These findings do not deny the existence of brutality and violence during the smuggling process. Yet, as Sanchez (2017) observed, violence is unlikely to emerge out of a vacuum as vulnerability is tied to the absence of safe legal migration paths as well as social and financial capital.

The stereotypical representation of the migrant smuggling phenomenon and its intrinsic links with the 'war/fight' against irregular migration is being strongly criticized by the scholarship. Spena (2016) stressed how the EU strategy to fight migrant smuggling was commanded by the ambition to fight irregular migration. When looking at the normative foundation criminalizing migrant smuggling, Mitsilegas (2019) questioned the way in which the securitization of the phenomenon is facilitated and legitimized by the use of recurrent discourses of evil smugglers at odds with the complex reality. The discursive and simplistic correlation between the dangerous criminal and the human smuggler figure, as well as the recurrent use of real yet extreme stories of smugglers abandoning migrants in the middle of the Libyan desert, pushing migrants with the help of automatic weapons inside overcrowded boats or leaving migrants suffocating hidden in trucks, obscure the decisive role of increasingly restrictive border policies in the migrant smuggling market (Andersson 2016; van Liempt 2016; Lucht 2013).

Several scholars not only criticize the silence on structural factors, including socio-political and economic processes pushing migrants to start their migration journeys, but also shed light on the relationship between anti-smuggling policies used to crack down irregular migration and the migrant smuggling phenomenon (Perkowski & Squire 2019; Achilli & Sanchez 2017). Because issues around irregular migration often creates feelings of unease, the construction

of migrant smuggling as a security threat with identifiable culprits to be punished feeds the false belief that irregular migration can be halted (van Liempt & Sersli 2013; van Liempt 2016). Bridgen and Mainwaring (2016) described how states were legitimizing and moralizing their harsher border control policies using the humanitarian and rescue narrative of the State as a saviour of the migrant who takes irrational risks and is trapped in the hands of a cruel and ruthless smuggler. The authors (2016) also deconstructed the recurrent politicized discourse of the ceaseless linear flows of migrants starting from point A to arrive directly to point B, which can create an overwhelming feeling of invasion for the European population.

The increased border enforcement and surveillance adopted to 'fight' the evil smuggler and the fragmentation of the journey resulting from the latter has several consequences. First, the detailed overview of Sanchez (2017), combining empirical research on migrant smuggling, demonstrates that ignoring the complexity of the migrant smuggling phenomenon has an impact on the latter in varied ways. Among other things, it can boost the sophistication and professionalization of migrant smuggling groups replacing community-based enterprises due to the increased criminalization of the phenomenon; it pushes individuals to go for more clandestine and hazardous routes; and it makes the smuggling fees increase the debt-exploitation risks. Mitsilegas (2019) and Triandafyllidou (2018) further observed the vicious circle created by this hardening-borders approach, particularly vis-à-vis migrants in long and fragmented journeys, which increases their vulnerability. Carling (2017) recalled the importance of critically assessing the current strategy in place to tackle migrant smuggling, especially when evidence shows that smuggling services are indeed increasingly expensive but not automatically abusive or exploitative. If the author (2017) acknowledged that a human smuggler is not a 'good Samaritan', he nevertheless warned against the use of simplistic portrayals of the latter to legitimize harsher immigration policies as a way to go 'after the bad guys'.

5.3   The dangers of the instrumental conflation between human trafficking and migrant smuggling

As has been highlighted, the strict dichotomy between migrant smuggling and trafficking can be problematic, especially when based on the controversial notion of consent (Section 3). Nevertheless, care should be taken to not conflate the phenomena in an oversimplified manner. Making human trafficking and migrant smuggling synonymous with one another obscures the points of intersection and differences between them, which can be detrimental for the conduct of relevant research (Peterka-Benton 2011). O'Connell Davidson (2016; 2017a; 2017b) strongly criticized the fact that human trafficking is often framed by politicians, media, and NGOs as 'modern day slavery'. The author believes

that choosing this framing makes it resonate with the Transatlantic Slave Trade, which is not only deceitful from a historical perspective, but has practical consequences. First, as highlighted above (4.1), using this analogy stirs up the imagination of the public and street-level bureaucrats, who will then focus mainly on the physical suffering of victims and the 'kidnapped/captured' narrative. Second, instead of focusing on the deeper and complex structural factors, the analogy shifts the lens toward the individual modern 'slave holder'. Finally, regarding the EU migration context, O'Connell Davidson (2017b) observed that politicians sometimes used migrant smuggling and human trafficking interchangeably. O'Connell Davidson (2017b) logically deduced the consequence of using the modern slave trade narrative on the policy-making arena. Considering that human trafficking is often perceived as a modern version of the Transatlantic Slave Trade, a similar appalling image will come to mind when thinking about human trafficking, which will help nation states legitimize stricter border controls. Brunovskis and Surtees (2019) and Dandurand and Jahn (2019) described this problematic conflation as a way to curb and prevent migration flows. By mismatching migrants with modern slaves and migrant smugglers with human traffickers/modern slave holders, Carling, Horwood and Gallagher (2015) discussed the issue as a 'classic public relations move' from the EU authorities. Taking the example of the decision to intervene militarily close to the Libyan coast in targeting vessels of migrant smugglers, the document of the European Parliament on these interventions uses the following narrative: 'the overarching objective is to help save lives by disrupting criminal networks of smugglers and traffickers' (European Parliament, 2019, 1). Mandic (2017) and Carling, Horwood and Gallagher (2015) demonstrated that the conflation triggered much more political support, as it was oriented more towards dreadful traffickers than mere facilitators of irregular migration.

6 DISCUSSION

The stereotypical representations of both phenomena are contributing to the creation of the 'false realities/truths' underlying the dichotomy between migrant smuggling and human trafficking and how they are understood and implemented (for instance when it comes to 'ideal' victim's identification) on the ground. As mentioned in the methodology section, laws can hardly encompass in an unambiguous manner the multitude of scenarios found in reality. It is also problematic that the distinction between the phenomena is legally forced. Indeed, it is hard to see why a smuggled individual should cease to be smuggled once exploited or a trafficked victim cease to be smuggled. One can also wonder how the already contested concept of transit migration can be helpful to have a better understanding of the complex grey area found at the nexus between debated notions like migrant smuggling and

human trafficking. This chapter does not aim at simplifying these concepts but to show their complexity, which reflects the messy situation on the ground empirically observed. Rather, the hope is that the findings presented will encourage and stimulate scholars and practitioners to take into account the particularly vulnerable positions of individuals stranded in transit spaces, also in an Intra-Schengen context where the absence of border checks and controls is assumed, and to question the strict categorization of individuals in one or another legal/administrative box. Indeed, if the blurry empirical reality of the grey zone highlighted above is overlooked, then it becomes easier to sort individuals into strict categories. This categorization can jeopardize the appropriate protection of migrants when looking deeper at the actual vulnerability, potential exploitation and abuse that individuals are facing in transit zones (see Brunovskis & Surtees 2019). The consequences of this legal sorting can be extremely severe: one person, if identified as a human trafficking victim and enter the protective anti-trafficking framework while another can be identified as a smuggled individual will not be offered the same protective measures. In the worst cases, the smuggled individual can be criminalized, even if a non-punishment clause exists in the UN Protocol against the Smuggling of Migrants. While the criminalization cannot take place for the mere fact of being smuggled, the criminalization can occur indirectly. This is for example the case if a migrant took part in smuggling operations and is not identified as a victim of human trafficking or if an individual in an irregular situation used a forged document (see FRA, 2014 on the criminalization of migrants in the EU).

Calling for a better understanding of the complex situation of individuals in transit within the EU is crucial, as it is a prime example of the grey area at the nexus between migrant smuggling and human trafficking. For this reason, it is argued here that the use of the concept 'transit migration', if precisely defined, can be considered useful and appropriate. Nonetheless, as Düvell (2012) advised, prudence is required when using the term 'transit migration', as the latter can easily be politicized and equated with issues of irregular migration and organized crime. This conflation is problematic, as the issue is located in a mixed migration context, meaning that individuals in transit are not only 'irregular' migrants but also refugees, asylum-seekers and potential victims of human trafficking. Besides, the use of 'transitmigrant/ transmigrant' as a label can potentially dehumanize migrants and create further distance between 'us' and 'them' as the individuals are not there to settle. It would also offer governments the possibility of absolving themselves from any legal responsibility in terms of care and protection due to the temporary nature of the stay (Farcy & Deguin 2019; de Massol de Rebetz 2018). Hence, clarity is imperative when defining the term as is the specific context in which it is being used.

7 CONCLUSION

The Commissioner for Human Rights within the Council of Europe, Mijatovic (2019), recently addressed how individuals on the move are vulnerable to exploitation and human trafficking. She called into attention that this group of individuals could be located at the external borders of the EU but were also living, often irregularly, inside member states of the EU and the Council of Europe or moving from one member state to another. Mijatovic (2019) admonished the previous warning of the Group of Experts on Action against Trafficking in Human Beings regarding the lack of assistance devoted to migrants arriving or already established in Europe, making them ideal targets for human traffickers (see also Brunovskis & Surtees 2019). Furthermore, the Commissioner (2019) pointed out the conflict of interest between anti-trafficking and the recent anti-smuggling policies which, she underlined, are mostly aimed at preventing irregular migration. This recent call for the protection of vulnerable people on the move, both within Europe and at its periphery, accurately illustrates the interaction between transit migration, migrant smuggling, and human trafficking.

The goal of this chapter was to expose the grey areas created by the particular interplay of the concepts analysed, their application in practice, as well as their problematic aspects. The latter was done by collecting, combining, and analysing the critical scholarship on human trafficking and migrant smuggling and its nexus, as well as the recent empirical scholarship which sheds light on Intra-Schengen spaces of transit. Nevertheless, there is no intention to throw a stone at practitioners in charge of victim identification and protection, which is a complicated task for various reasons.[10] As cases of human trafficking and migrant smuggling are often hidden and convoluted, the investigation and collection of evidence is highly difficult, especially with individuals on the move.

Following the urgent call of Baird (2016b), it is certain that further empirically grounded and critical research on the nexus between human trafficking and migrant smuggling, also in the Intra-Schengen border mobility context, is of vital importance in order to have a better grasp of the situation on the ground. Empirical data about the 'law in action' on these hidden phenomena must be brought to the forefront in order to improve the 'law in the books'. Contrary to the pre-conceived and simplified idea of human trafficking and migrant smuggling being recognized in a strictly separate manner, the literature unveiled the existence of 'in-between' cases, which

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10 Many factors prevent concrete identification. Among other things: lack of trust towards the authorities, fear of retaliation from the traffickers, the need to pay a former debt or to pay remittance to one's family, or victims who do not consider themselves as victim of human trafficking. For more information on the issues around victims' identification in a transit migratory context, see the recent work of Brunovskis and Surtees (2019).

seldom fit neatly into the prototypical legal categories due to the presence of signs of (short-term) exploitation, abuse, and the absence and presence of full or partial consent coexisting. Dauvergne (2008) adeptly described this legal predicament as 'law [which] specializes in drawing clear bright lines' (91). Based on the scarce but growing empirical findings highlighted in this chapter, it can be assumed that the aforementioned 'in-between'/grey areas are likely to become more and more troublesome within the Schengen Area.

As individuals increasingly get stranded in transit spaces, their aspiration to continue their journeys, either from one member state to another in the EU or to the United Kingdom, can bolster the demand for migrant smuggling services. Such smugglers can increase their travel fees, which can raise the (initial) debt of the migrants and can also funnel individuals towards more hazardous and hidden roads due to restrictive border regimes. The debt/facilitation dynamic explained in section 4 is likely to have an impact on subsequent (short-term) exploitation en route or in the country of destination. Nonetheless, the stereotypes around the 'ideal' victim of human trafficking creates an unreachable threshold which will prevent the individuals situated in this grey area to be considered as such. The vicious circle brought to light above, which pushes individuals on the move into vulnerable positions, is not solely the result of unscrupulous deeds of ill-intended individuals. Section 5 of the present analysis deconstructed the solutions brought forth to tackle migrant smuggling and human trafficking, which are often based on prototypical representation of extreme cases.

In their fight against migrant smuggling and human trafficking, nation states often fail to mention structural factors pressing people to migrate and elude discussing their own responsibility in these processes. Yet, as Andersson (2016), Kemp (2017) and van Liempt (2011) observed, human trafficking and migrant smuggling can also constitute side-effects of EU restrictive migration policies. What clearly emerged from the empirical and critical scholarship is the conflict of interest existing between prioritized anti-trafficking, anti-smuggling and anti-irregular migration policies. This conflict can have counter-productive consequences. In their battle for sovereignty, nation states decided to create a legal dichotomy which could, in theory, guide practitioners to sort the worthy and deserving (passive and innocent) victim from the guilty irregular migrant (Dauvergne 2008). While the international and European commitment to tackle human trafficking was generally applauded by scholars, the assumption that it was possible to fight it while preserving the full integrity of a nation's state border was questioned. As van der Leun and van Schijndel (2016) rightfully concluded, the relationship between the punitive approach adopted to fight against irregular migration and the protective approach adopted towards human trafficking should be re-examined rather than addressed as completely isolated battles. It becomes clear that rigid legal categories hardly fit the complex reality where the distinction between a 'deliberate' and 'incidental' exploited and/or abused victim can be considered

nonsensical (Carling, Gallagher & Horwoord 2015). This is the case in transit spaces where scholars brought to light the particular vulnerabilities of individuals in the move to exploitation, debt bondage, etc. The contradiction between these distinct yet linked policy agendas beg for the following reminder, also aimed at (EU) law and policymakers: one cannot keep on feeding the monsters they are pretending to fight while keeping the 'saviour' face to legitimise debatable policies.