Recognition and International Legal Personality of Non-State Actors

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There is no doubt that states and international organizations are regarded as subjects of international law. The position of other entities acting in international relations is unclear. The international legal personality of groupings [including armed ones] struggling for the right to self-determination is the most controversial, as there are no universally accepted criteria of the personality under international law. The author discusses the role of recognition in granting international legal personality, as well as the function of non-recognition of unlawful acts as an element of the law on international responsibility.

Keywords: International Subjects, statehood, international organizations non-state actors, recognition, international responsibility for unlawful acts

1. Introduction

Although from today’s perspective one must admit that legal personality belongs to the key theoretical problems of international law, such an approach has been elaborated relatively late in the development of the law of nations.1 This is hardly surprising, as before the 1920s states were considered to be the only subjects of international law. The establishing of the League of Nations and International Labor Organization modified to some extent the approach of the international community to the problem, and the creation of the United Nations forced the ICJ to formulate some important requirements relating to the recognition of legal personality of international organizations.

There is a growing interest among international lawyers for a legal personality of non-state actors. This is a new phenomenon, in particular if one leaves aside international organizations. Surprisingly, publications concerning the issue are relatively limited. The aim of the present paper is an attempt to define, to what extent the legal personality of the non-state actors can be derived directly from international law, and/or whether it depends on recognition by the international community.

Our starting point is that the international personality is in principle indivisible, and its scope should be the same with respect to all primary (states) and derivative or secondary (all other subjects including non-state actors, sometimes called non-state participants in international relations) actors. There is no doubt that every state possesses legal personality; doubt can exist, however, as to a qualification of a

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particular subject as a state (an example of Palestine is especially striking from the point of view of international theory and practice). The legal personality of other subjects and its consequences give rise to doubts and disputes. Moreover, it is not possible to treat all the non-state actors as a homogenous category; on the contrary, we have to approach each kind of subject individually. This is an important complication as far as general conclusions on legal personality and recognition are concerned.

There are four elements connected with international legal personality: a treaty-making power (often referred to as *jus tractatuum*), a right to send and receive diplomatic envoys (*jus legationis*), a right to present claims based on international responsibility, and a right to use armed force. Consequently, according to our main thesis, every international subject must possess these features. We have to make a distinction between the international legal personality and competence to act in international relations. Those powers should be provided in a statute (founding treaty) of the international organization concerned, or – with respect to other non-state actors – in any instrument defining or confirming their international legal status. An option to undertake an effective international action opposable to other subjects and shaping the international position of the entity concerned is an indispensable element of the international legal personality.

A mere fact of possessing rights and obligations based on international law is not sufficient to claim international personality. Such rights and duties must be based upon an international agreement concluded between the states or other subjects of international law, and they are binding exclusively if accepted by them. Let’s take the example of the (nearly universally accepted) Washington Convention of 3 March 1973 on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Does the conclusion of or accession to the convention grant international legal personality to all endangered animals, to Amur tigers as a whole, or to particular tigers? What is the influence of reservations to the Convention upon the legal situation of specific animals? In fact under current international law states only can be parties to the CITES, and wild animals and plants do not themselves accede, etc. In fact, the same reasoning applies to individuals (human beings). We discuss a possible legal personality of transnational corporations, legal persons of public law and private law of specific states, foreign investors (protected under BITs or multilateral instruments), finally of individuals as such (in connection with human rights treaties or with the international criminal responsibility). We can ask the same question with respect to endangered plants and animals.

Can we assume that all subjects of international law possess *ipso iure* the characteristics mentioned above, but they do not have specific powers to exercise them? What are similarities and differences between the nature of subjects of international law, the scope of their personality, and the effectiveness of their action under international law?

The creation of intergovernmental organizations raises a question about a distinction between the legal personality of states and other subjects of international law. We are unable to quote here a full list of the latter. We find some, the personality of which is traditionally accepted – like national liberation movements, belligerents, or guerillas. The latter two categories usually relate to the parties to a civil war, attempting at secession. In that sense all those subjects claim the exercise of their right to self-

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2 Even though the power to wage war is limited under the UN Charter, the practice shows that states under various circumstances refer to the use of force, although they try to justify it. As to international organizations, the power to use armed force can be considered with respect to the UN and regional organizations within the meaning of the Charter. It is hardly imaginable that some states establish an international organization with a single goal to use armed force at its own account, and the member states would not bear any responsibility (what is a logical consequence of separate legal personality of the organization and its members).

3 In September 2013 some 178 states were parties to the Convention.

determination. Such a formula is controversial. Let’s remind ourselves that the use of armed force by Russia against Georgia in August 2008 was justified by the necessity of support to Southern Ossetia and its people, internationally recognized and allegedly lawfully struggling for independence.

2. Legal Personality of International Organizations

International intergovernmental organizations represent the most numerous and characteristic group of non-state actors. We deliberately exclude here non-governmental organizations. The dominant view is that they are not subjects of international law, although they can play an important role in international relations. The creation of the first international organizations in the first half of the 19th century did not constitute a revolution in international law. International river commissions were international organs rather than international organizations. By the way, the category of international organs deserves more attention from international legal writing. Up to now, no definition of such organs was formulated; we do not know what its features are—in particular we do not know what the differences are between international organs and organizations: one of them is that international organs do not have members (?!); nor do we have a clear classification of international organs. This category encompasses many various entities, starting with river commissions (from their very beginning they were exceptionally progressive–they could regulate the conduct of individuals in connection with the navigation on international rivers or other forms of their exploitation, albeit in a limited scope), through control bodies established in accordance with human rights treaties, to international courts and tribunals.

Two theories have been formulated during the recent decades to define the legal personality of international organizations. The objective one was proposed by F. Seyersted; among the proponents of the subjective one we can mention H. Schermes/N. Blokker, A. Reinisch, D. Bowett and C. F. Amerasinghe. According to the objective concept, the international organization can be granted the legal personality notwithstanding its statute, if some objective criteria required by (general) international law are met. The partisans of the dominant, subjective theory maintain that the legal personality can be either based on express provisions of the founding (constitutional) treaty, or implied from powers, rights and obligations imposed upon the organization by the member states. In fact, both theories suggest that international legal personality and particular powers to act are somehow connected with the will of the member states.

The World Court in two advisory opinions concerning the international legal position of non-state actors emphasized that international subjects can possess different scopes of powers. The first opinion related to the territorial scope of the European Commission of the Danube and was adopted on 12 August 1927. Two commissions were established on the basis of Articles XVI-XVIII of the Treaty of Paris of 1856. The scope of powers of the final European Commission for the Danube was defined by the so-called Public Act of 2 November 1865 regulating the navigation on the Danube. The states-parties put the Commission under the protection of international law (Article 1). The Additional Public Act of 28 May 1881 conferred upon the Commission numerous powers of double nature: regulatory and technical. The commission was supposed to become a sort of a “river state”. The dispute referred to the Court

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6 See P. M. Dupuy, Droit international public, Paris 2010, at 198. Strictly speaking, neither the protocol itself, nor the 1927 advisory opinion do not use this notion. In 1930, one G.A. Blackburn stressed that the powers of the Commission justify the treating of it in future like the state, including the membership in the League of Nations. Cf. “International Control of the River Danube”, Current History, XXXXII (September 1930). This opinion was criticized by J. Kunz in 1945. He stated that the river
concerned whether the territorial changes before the riparian states after the conclusion of the said Public Act led to any modification of the competence of the Commission with respect to the lower part of the Danube between Galatz and Braila. The advisory opinion stated that the powers of the Commission were confirmed by the international treaties concluded after its establishing, in particular by the Public Act. If the parties agreed as to their substantive scope, there was no need to decide on their nature or legal basis. The Court emphasized that the Commission was not the state, as it did not dispose of territorial powers. Its activity was independent of the territorial sovereignty vested upon the riparian states. However, it was an international institution (institution internationale), exercising powers of functional character. They encompassed inter alia the power to intervene if the states-parties acted contrary to their engagements concerning the exploitation of the Danube. These activities of the Commissions should not exceed its powers granted by the states under the treaties. The opinion should be considered as the recognition of competence of the international agency, and the rejecting of any form of its international legal personality – so that it could not have any power deriving directly from international law.

The second opinion was passed on 11 April 1949 and concerned the reparation for injuries suffered in the service of the UN. Contrary to the 1927 opinion, the Court was invited to rule on the powers of the UN not defined in the Charter. The Court used the opportunity to formulate a general theory of the legal personality of international organizations. The 1949 opinion must be interpreted with caution and restrictively, as an exceptional solution, as the international community was at that time fully dominated by the states. The opinion was applicable to the United Nations as the universal organization with nearly general participation, so that the will of the member states was decisive for an opposability of the legal personality of the UN towards all states. The Charter did not provide expressis verbis the competence to present international claims nor to send diplomatic envoys (special missions, using contemporary language). The Court stated however that if the member states conferred upon the organization certain powers, they had to grant the UN certain scope of legal personality. In fact Art.104 of the Charter provides for a legal personality, limiting it to domestic legal orders of the member states. A proposal to grant international legal personality was rejected at the San Francisco conference, as the delegates decided that the personality would derive from the Charter as a whole.

The court stressed that not all the subjects acting in international relations have the same scope of legal personality. The states are sovereign and therefore they have the full scope of legal personality. The powers of the international organizations are limited and strictly connected with the functions conferred by the member states. There was no doubt that the power to send diplomatic agents was indispensable to perform the functions of the UN, and that those agents had to be protected under international law. This protection corresponds with the diplomatic protection by the states, but because of the nature of the UN it’s purely functional. The Court based the protection on the context of all the provisions of the Charter, what corresponded with the proposals from San Francisco. So it rejected any powers of the organizations based directly upon international law, but referred to the conception known later as the doctrine of implied powers.

Summing up, both advisory opinions went in the same direction. The opinion of 1949 to a certain narrow extent completes the previous opinion of 1927. Both opinions found a source of the competence of the international organizations in the will of the member states. They also confirmed the principle of commissions constituted an object of international law regulation, and were not subjects of law. See "Experience and Techniques in International Administration", Iowa Law Review, XXXI (November 1945), p. 50.

7 Advisory Opinion, at 64. The Court referred also to a notion of a international body (at 43).


conferred powers as the basis of action of the organizations on the international plane. This principle is currently universally accepted. It expresses the subjective legal personality, depending upon the decision of the founding fathers of the organization. There is a dispute concerning the nature of implied powers, which are not provided by the statute, but necessary to achieve the goals of the organization. The Reparation for injuries opinion based the implied powers on the general context of the Charter. On the contrary, in the practice of the European Union the decision on the implied powers is vested upon the Council, depending on the proposal of the Commission and subject to consent of the European Parliament. In practice, the possible scope of the implied powers was framed extensively, the only limit being the letter of the founding treaties. We could discuss whether the conception of implied powers does not reflect the objective legal personality of the international organization, as certain powers could possibly be derived from general international law.

Comparing with other subjects of international law, the role of recognition with respect to international organizations and international organs is much less significant. It is of certain importance for the relations between the particular organizations with non-member states, but it does not constitute a condition of its activity in international relations. However, if we accept the objective theory of legal personality, we have to cope with its significant weakness: it does not clarify how the international personality could be imposed on the organization against the will of the member states and of the organization itself. In such a situation the recognition by third parties would play a more important role than now, in particular in the context of the opposability of the activities of the organization, and of the effectiveness of its acts.

What is difficult is not the definition of the international organization or its legal personality, but the qualification of the specific entity as the organization.

The discussion on the objective character of the legal personality took place also in the European Union after the conclusion of the Treaty of Maastricht. Some authors stated\(^\text{10}\) that the Union acquired an implied international legal personality, with the consent of the member states which empowered the Union to conclude international agreements in the areas of common foreign and security policy, and the cooperation in justice and home affairs. Moreover, those agreements could be concluded on behalf of the Union, and not of the member states.

### 3. Recognition and Legal Personality

Classical international law included national liberation movements, guerillas and belligerents in civil wars in the category of international legal subjects. Those notions and expressions used in international language have positive connotation, and express a support of the international community for those subjects. On the other hand, we often face certain groupings engaged in armed confrontation with existing states and governments but deprived of an international support and condemned by the international subjects. It is interesting to investigate what factors decide whether the groupings in question are treated as pioneers of independence and heroic freedom fighters, or rather as armed bands and terrorists.

The said groupings are connected with internal (non-international) armed conflicts, and they conduct armed hostilities in order to proclaim independence, or – from the other perspective – to secede. In that sense all these subjects struggle for their self-determination which can be understood either as the external self-determination (aimed at the establishing of a new state), or as internal self-determination (unconstitutional change of government, modification of a political, economic and social system, etc.).

In order to check the legal situation of non-state actors we start by a defining who is a bearer of the right to self-determination. In the colonial context it was based on a list proposed by the special UN Committee on Decolonization, indicating all dependent territories. In accordance with UNGA Resolutions 1514 and 1541 (XIV), they had – alternatively – an option either to create a newly independent state, or to join already existing newly independent state (former colony), or to establish a new state together with another former colonial territory. A dependent territory could not, however, remain part of the former colonial power. Plebiscites in Gibraltar and Mayotte to maintain a colonial status were exceptional.11 Already in the time of decolonization the right of self-determination did not concern people in ethnic (tribal) sense, but instead it was granted to a population of a specific territory. That can be seen in particular in Africa. The OAU confirmed the principles of intangibility of frontiers and territorial integrity during its first session in 1964. The same principles were included subsequently by Art. 4(a) of the Constitutional Act of the African Union. In the meantime the said principles were put in question by secessions of Eritrea (1993) and South Sudan (2011). This suggests that from the point of view of the territorial integrity of the state the secession of the part of territory is evaluated in a different way than the modification of frontiers by foreign intervention.

The approach to possible subjects of self-determination was verified and modified in the process of the Conference on Security and Cooperation in Europe. Under pressure by Western European states, the instruments of the CSCE confirmed that the right to self-determination is not limited to colonial people, but it is attributable to all nations (peoples organized in states). It consists of the right to determine freely the political, economic and social system of the state. From such an angle, the boundaries in Europe are not fixed once for all eternity, but they can be modified if the peoples (nations) concerned freely express such a will in a democratic way. This idea paved a way towards a unification of Germany under favorable circumstances, nearly 25 years after the adoption of the Helsinki Act.

More recently the role of uti possidetis was emphasized in the process of dissolution of the USSR and Yugoslavia, and – from a perspective particularly close and interesting for us – in the case of regaining independence by Lithuania.12 In all cases connected with the dismemberment of the federations the international community was eager to recognize new states in the former administrative frontiers within the predecessor states. This confirms that self-determination has a territorial dimension. Also opinions of an arbitration commission, the so-called Badinter Committee, accepted the uti possidetis principle. In Opinion No. 3 of 11 January 199213 the Committee stated that together with the gaining of independence by the former Yugoslav republics and their international recognition, the administrative boundaries turned into state borders and were therefore protected by international law. The importance

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11 In fact, a referendum in Gibraltar in 2002 concerned an establishing of a British-Spanish condominium, and not independence.

12 The Declaration of Independence of 11 March 1990 refers to the principles of territorial integrity and inviolability of frontiers, as formulated in the Final Act of the CSCE, while the two remaining Baltic states in their declarations of independence invoked the revival of their prewar statehood and boundaries. The reason of invoking uti possidetis is clear: Lithuania acquired rights to the (then Polish) city of Wilna on the basis of a treaty between the USSR and Lithuania of 10 October 1939. The conclusion of that treaty was possible thanks to the Hitler-Stalin Pact of August 1939, the validity of which Lithuania constantly challenged. This situation is a perfect example of a political schizophrenia.

of uti possidetis was further strengthened by accepting a protection of the territorial integrity of Bosnia and Herzegovina. Opinion No. 2 of 11 January 1992 confirmed that the Serbian and Croatian minorities had the right to autonomy within the state, but were not entitled to join Serbia and Croatia, respectively – as they did not possess the right to self-determination. Again, the territorial dimension of self-determination replaced the ethnic one.

The ICJ emphasized the importance of uti possidetis in its judgment in the Territorial dispute (Burkina Faso/Mali) case. It indicated that the principle belonged to general principles of law, and its application went beyond regional relations in the African context. The Court’s argument is puzzling, as because of its content and role in international practice uti possidetis should be interpreted rather as customary norm. Perhaps it would be too difficult to give evidence of the customary nature of the norm.

Recent UNSC resolutions concerning Western Sahara, one of the last dependent territories, confirm the connection between self-determination and population of specific territory, notwithstanding its ethnic composition.

The issue of subjects of the right to self-determination (ethnic groups, other groups of individuals, population of the territory) is of crucial importance for our topic. The recognition of that right will be decisive for the establishing of their position in international relations, and for granting them rights and obligations. Those rights depend therefore of the will of the third parties, so in fact the said non-state actors do not have international legal personality.

Specific problems occurred in the cases of civil wars in Libya and Syria. The oppositional movements were recognized by the international community as “legitimate representatives of the people”. Formerly the same formula was used in a colonial or similar to colonial context (PLO, ANC in South Africa, and FRELIMO in Mozambique). The recognition (not necessarily amounting to de iure) by the resolution of the UN General Assembly or by the majority of states was decisive. The same expression was used in the ICJ’s advisory opinion on the accordance with international law of the unilateral declaration of independence of Kosovo (2010) where the Court stated that the act passed by the elected representatives of the people was not attributable to the international administration of Kosovo. The Libyan Transitional Council declared itself a sole representative of the Libyan people (but not as the transitional government) at the end of February 2011, and as such it was recognized by France and a number of other states. The recognition of the new government was possible first after the occupation of Tripoli and defeat of the Gaddafi regime, and took the form of voting on the credentials in the UN General Assembly (16 September 2011). The Syrian National Coalition of Syrian Revolution and Opposition Forces was established in November 2011, after several months of civil war, as a result of consolidation of a part of oppositional organizations. It was subsequently recognized by Libya, France and a group of other states. On the contrary, the government in exile for Syria, established in Turkey in March 2013, did not get an international recognition.

What is the significance of recognition as legitimate representatives of people? Under classical international law, a legitimism of state authorities was subordinated to legalism and effectiveness. This tradition was challenged in the 1990s, as the right to democracy was invoked as customary rule in Europe and America. If it becomes universal, the role of recognition/non-recognition as a measure protecting

15 Resolutions 1495(2003), 1813(2008), 1871(2009), or 2099 (2013).
democracy will increase. Taking into account a military coup d’état in Egypt in summer 2013, there is still a long way to go. Secondly, the recognition as legitimate representative does not amount to the recognition of government, but allows certain level of protection under international law, enables purchase of weapons and other equipment, as well as possibly giving access to financial resources. Finally, from the perspective of third parties, it strengthened possible reparation claims for damages suffered during the civil war. Art. 10 of Articles on international responsibility of states (as annexed to the UNGA resolution 56/83 of 12 December 2001) provides for a responsibility of new governments for damages incurred during the insurrection, although the responsibility can be implemented first after the collapse of the previous regime.

4. Obligation of Non-Recognition of Illegal Situations

If recognition is the source of international legal personality of non-state actors, it should imply the obligation not to recognize those entities, the establishing and activities of which are unlawful. We should deny a priori any effects of such acts. Such an approach is particularly important when armed groups claiming recognition invoke the right to self-determination; as such situations constitute a threat to the territorial integrity of the state concerned.

The principle of non-recognition of unlawful territorial acquisitions was initiated by the so-called Stimson doctrine, proposed by the US government in connection with the Japanese aggression in China in January 1932, and continued with respect to the annexation of the Baltic States by the USSR in 1940. In international practice the problem became acute after a proclamation of independence by Southern Rhodesia (1965) and in the context of the Israeli-Arab war in 1967. Resolution 216(1965) called the member states not to recognize the illegal regime of prime minister I. Smith and its declaration of independence. The same idea was repeated in the following resolutions, including resolution 423(1978) rejecting all effects of activities of the illegal government, and resolution 448(1979) calling for non-recognition of the results of domestic elections. As to the situation in the Middle East, resolution 242 (1967) emphasized the illegality of territorial acquisitions by force and called on the parties to the conflict to respect the territorial integrity of all states in the region. One can invoke also resolution 402 (1976) condemning the recognition of Transkei by Lesotho, resolution 541 (1983) on the Turkish Republic of Northern Cyprus, resolution 662 (1992) on the invasion of Kuwait by Iraq, and resolution 757 (1992) on the war in Bosnia and Herzegovina.

The obligation not to recognize unlawful situations was confirmed in the 1970s, by numerous resolutions of the UNGA and decisions of international courts. The Declaration on Principles of International Law (resolution 2625[XXV] of 24 October 1970) stated in al.10 of Principle 1: No territorial acquisition resulting from the threat or use of force shall be recognized as legal. The same formula can be found in resolution 2734[XXV] of 16 December 1970, or the Declaration on the Strengthening of International Security. Finally the Definition of aggression (resolution 3314[XXIX] of 14 December 1974) reads in


Art. 5(3), that no territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful. All those resolutions were adopted by consensus.

As to the jurisprudence of the ICJ, we start with the advisory opinion on Namibia (1971). The Court confirmed the extinction of the mandate of South Africa with respect to Namibia, so that the occupation of the territory became illegal. All the member states of the United Nations should abstain from any acts suggesting, that they recognized (even de facto) the legality of that occupation. In East Timor case, the Hague judges stated surprisingly that no international organ obligated the states not to recognize the annexation of East Timor by Indonesia and consequently not to negotiate any question relating to it with any state other than Portugal as colonial power. Finally, in the advisory opinion on the wall in the Palestinian territory the Court confirmed the acquisition of territory by force is illegal and cannot be recognized. In the latter cases there was a certain discrepancy between judges as to an interpretation of the principle of non-recognition. Judge Skubiszewski in his separate opinion of 1995 stated that the obligation is automatic, absolute and self-executing; while Judge Higgins in her opinion of 2004 considered that the decision of the UNSC was required.

European courts also referred in their jurisprudence to the illegality of certain situations and the obligation not to recognize their effects (e.g. the ECJ in its judgment in SP Anastasiou (Pissouri) [1994], concerning the rejection of the certificate of origin issued by the customs authorities of the Turkish Republic of Northern Cyprus, while in Brita[2010] it denied it; or the decision of the European Court of Human Rights in Strasbourg in Ilascu [2004], concerning the responsibility of Russia for the violations of human rights in Transdniestr).

Articles on state responsibility pronounce expressis verbis on the non-recognition of unlawful situations in a mysterious way, in the context of responsibility for serious violations of peremptory norms of international law (Art.41). This seems to restrict the significance of the rule, and also to undermine a universal application of another principle: ex injuria jus non oritur.

The obligation of non-recognition of unlawful situations is usually invoked in the context of illegal territorial situations, but it should not be limited to them. The non-recognition concerns also an illegal (unconstitutional) government and other cases. It seems that the customary nature of the principle is sufficiently confirmed by the international practice.

In this context we should address one more question: who decides whether the questionable situation is really unlawful. The ICJ seems to suggest (in the East Timor case) that there must be a basis for the decision in the form of the resolution of political organs of the UN. We disagree with this postulate, simply because of the political nature of the acts of the General Assembly or the Security Council. Articles on state responsibility go in a similar direction, as they leave to the states a decision as to claiming international responsibility for violations of obligations erga omnes (Art. 42(b) and 48(1)(b)).

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23 Ilascu and others v Moldova and Russia, Application 48787/99, judgment of 8 July 2004.
The practice relating to sanctions and countermeasures decisively confirms this solution. Each state itself takes a decision on recognition of other international actors and their rights and obligations.

5. The UN Security Council and the Status of Non-State Actors

The question remains open whether the fact that particular non-state actors were directly addressed by the Security Council resolutions can influence their international legal situation and confer legal personality. The UNSC deals with such entities mostly – if not exclusively – while acting in accordance with Chapter VII of the Charter, and tries to enforce the principles of law of armed conflicts and humanitarian law. A common usage is an appeal for cessation of hostilities.

We find numerous examples of resolutions addressed to non-state actors other than international organizations. This is in a way special, as according to Art. 48 (2) of the UN Charter exclusively the states are obligated to obey to the decisions of the Organization.

Examples of resolutions addressed to non-state actors are more and more numerous, starting with resolution 46(1948), addressed to the Arab Higher Committee and Jewish Agency in Palestine. Further instruments include e.g. Resolution 1193 (1998) concerning different groups in Afghanistan, including Taliban, Resolution 1270 (1999) addressed to armed groups in Sierra Leone, Resolution 1822 (2008) concerning terrorist activities of Al-Qaeda and Taliban, Resolution 1856 (2008), relating to different armed groups in the Democratic Republic of the Congo (including in particular the Congrès national pour la Défense du people (CNDP), Lord’s Resistance Army, and Forces Démocratiques de Libération du Rwanda (FDLR)), Resolution 1860 (2009) addressed to Israel and Hamas, calling to ceasefire, and finally Resolution 1701 (2006), concerning the situation in Lebanon, calling for cessation of hostilities, disarmament of Hezbollah, and establishing of demilitarized zone in Southern Lebanon. Moreover, the non-implementation of such resolutions can result in imposing sanctions upon the groups concerned – e.g. Resolution 1127 (1997) proclaimed sanctions against UNITA (acting in Angola) for disobeying the peace agreements of Lusaka. We emphasize that the adoption of those resolutions did not amount to the recognition of international legal personality of the addressees, but granted them certain powers to act in international relations (rights and obligations), without taking any firm position towards their status.

6. Concluding Remarks

The passage of the ICJ’s advisory opinion of 1949 in the Bernadotte case emphasizing that the scope of legal personality, international rights and obligations, varies with respect to different categories of subjects remains fully actual. It’s time to modify and to systematize the approach to non-state actors. The legal personality of international organizations depends upon the will of the founding states, and it cannot be questioned, at least by the members. The universal organizations like the UN are opposable to all states including non-members (which are not numerous anyway) – in that sense Art. 2(6) of the

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24 We do not consider here a situation where some particular states are under international obligations to coordinate their policies.

25 The UNSC addressed certain resolutions directly to individuals, e.g. imposing smart sanctions (travel ban, freezing of assets), but also calling to participate in processes of national reconciliation (see resolution 1072[1996] concerning the situation in Burundi, resolution 1258[1999] on the situation in the Democratic Republic of the Congo) or even to stop producing and distributing drugs (resolution 1333[2000] on Afghanistan). It might be interesting to analyze whether the resolutions could have direct effect (become self-executing).
UN Charter establishes an objective regime (effective erga omnes) within the meaning of Art. 35-37 of the Vienna Convention of 1969 on the Law of Treaties. A possible protest against the legal personality of the said organization by third parties is not of importance. International organs based on international treaties can also have international legal personality of a functional nature and limited powers. Two specific subjects, the Holy See and the Order of Malta, are universally recognized on the basis of the general consensus. Their personality derives from the former territorial status. There is also a consensus as to the personality of the International Committee of the Red Cross, although there is no ground to expand this international personality to other NGOs.

It is much more difficult to build up such a consensus as to other non-state actors. The notions of “belligerent” or “guerilla” are fluent and indeterminate, there are no homogenous criteria allowing the identification of particular subjects, and their acceptance depends upon recognition, so it’s highly political. The expression “national liberation movement” is in a way outdated, conditioned by ideology and connected with the process of decolonization by armed force. The legality of their activities in the era of the ban on the use of armed force can be disputable. This category should be more and more replaced by a notion of separatist or secessionist movements. Such expressions are, however, pejorative. We suggest replacing it by “people attempting to exercise their right to self-determination”. The classification of those subjects will also depend on recognition. The subjects expressly or at least implicitly recognized on the forum of universal international organizations will be privileged, even though recognition of this kind does not prejudice their international legal personality (see the case of Palestine after being granted observer status within the UNGA).

The situation of groups of individuals or political fractions is even more complicated. We do not suppose that they are subjects of international law. They only possess certain international legal rights and obligations, e.g. in the domain of the law of armed conflicts (as to admissible weapons and methods of warfare) and humanitarian law. The scope of those rights and obligations is dependent upon the recognition by third parties, and consequently on conferral by them. The recognition will be of constitutive importance. The recognized non-state actors do not have per se any attributes of international legal personality, derived directly from general international law, except those connected with customary international human rights law. One has to remember that human rights protection is individual. Certain doubts exist with respect to a possibly collective nature of protection of minorities (individual rights can be exercised jointly by the individuals belonging to the same group) and to self-determination. The latter can be exercised exclusively if recognized by third parties, and thus we start following a vicious circle.
The Dark Side of Migration Remittances and Development: The Case of Edo Sex Trade in Europe

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Migrants’ remittances outflow to developing nations has gained wide attention in recent times. This is due to the fact that it has surpassed the amount in total aid money from developed nations to these developing nations. According to World Bank estimates in 2011 remittances by migrants in the United Kingdom to India is 4 billion USD compared to 450 million USD aid to the country in that same year.26 When looked at in real terms it means how much impact these money can have on the developmental strides of developing countries in the long and short run. The remittance flow to developing nations in 2008 was put at 336 billion US dollars and in 2009 it was 316 billion US dollars from developed countries. These remittances have in no small way had increased positive impact on the ways of life of persons and relatives living in these less developed countries. It is a relief to many homes from the grip of intense poverty. But the question is how much of these remittances are from legitimate and morally right sources? This paper seeks to look at remittances from Europe to Edo state of the federal republic of Nigeria and analyse the possible sources of remittances that have had an impact on the lives of the peoples of Edo state.

Keywords: migration, remittances, human trafficking, human traffickers and sex trade.

1. Introduction

The interconnectivity between migration and development is not a new phenomenon. The periods before the industrial revolution between the mid sixteenth century and the 1820’s brought about the uprooting of people from their homes in coastal parts of West Africa to provide the needed manpower for the development of societies in the Europe and America. This was a form of forced migration known as the period of transatlantic slave trade. An estimated 12 million slaves were moved out of Africa. The twin pronged trajectory of resistance movements by the slaves and rights activists of that time and redundancy occasioned by industrial revolution meant that the services of the slaves was no longer needed, led the abolition of slave trade. Many had to be returned to Africa to the coastal region which is today known as Liberia and Sierra Leone. However many remained, this influenced the composition of American and Caribbean populations of African descent who are mostly descendants of African slaves.29

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27 Dillip Ratha & Sanket Mohapatra & Ani Silwal, Outlook for Remittance flow 2010 to 2011; Remittance outflow to developing nations remained resilient in 2009 expected to recover during 2010-2011, Migration and Development Brief; Migration and Remittances Team Development Prospect Group, World Bank, 2010.
In October 1961 the first bilateral agreements to move Turkish guest workers to West Germany was reached between Germany and Turkey, as Germany needed young men to work in its post-World War 2 booming economy. The migration of Turkish workers was by individual and small group responses to the initiatives of German and other business enterprise.\textsuperscript{30} Workers were also attracted from countries like Greece, Portugal, Italy, Spain and Yugoslavia.\textsuperscript{31} Some immigrants outsourcing were born out of colonial relationships between the colonies and the colonial masters. Evidences of these are the North and some of West Africans origins in France, Indians, Pakistanis, Nigerians Ghanaians and others from former British Colonies in the United Kingdom\textsuperscript{32}. The important point here is that these migrants and host relationships have imparted on the development of these developed nations in no small way.

The focus of migration and development today is the amount of remittances migrants living and working in host developed nations are sending back to their home countries. The United Nations says it was more than the entire sum of aid from these developed nations to developing nations. This influenced the interest of the UN in the Global Forum on Migration and Development which was inaugurated in Belgium in 2007. This forum is not a creation of the United Nations but its relevance has made the United Nation an active participant in the forum. The United Nations Secretary General recognized that “one of the main achievements of the Global Forum has been its focus on the contributions of international migration to development and on building better understanding and collaboration among countries linked by migration; that the meetings of the Global Forum on Migration and Development have successfully engaged both Governments and the multilateral system in realizing the benefits of international migration for development and is collaborating to address its potentially detrimental effects”\textsuperscript{33}.

Regardless of their origin and the causes of the relocation of almost 200 million migrants worldwide, their productivity and earnings constitute a powerful force for poverty reduction. Remittances are the financial counterpart to migration and are the most tangible contribution of migrants to the development of their areas of origin.\textsuperscript{34} According to the Central Bank of Nigeria in 2007 formal inflow of remittances to Nigeria was 17.9 billion USD representing 6.7% of the GDP, with the United States of America being the highest remittance sending country, followed by the United Kingdom, Italy, Canada, Spain and France\textsuperscript{35}

2. Factors Influencing Migration

\textsuperscript{32} Erik Bleich, \textit{The legacies of history; Colonization Immigrant Integration in Britain and France} 2005, Springer.
Discourses on migration have identified two major factors responsible for migration. According to Ghaffari and Singh The centripetal and centrifugal forces otherwise known as push-pull are factors that could compel people to migrate.36

The push factors are those challenges in the country of origin of the migrant that causes him to move out. These factors range from economic, political, cultural and religious. Economics have been identified as the major push factor responsible for why people migrate. These range from unemployment, underemployment, and famine that produce poverty and encourage rural outmigration.37 According to the International Labour Organization, the greater number of international migrants of over 100 million has left their homes to find better jobs and opportunities for their families abroad. Migrants tend to move to places where they can receive added value for their services.

Other push factors are political instability, civil strife, wars, ethnic and religious persecutions, infringements on human rights. Immigrants who fall under these categories are considered as asylum seekers who become refugees if their application for asylum is positive. This is based on the 1951 convention relating to the status of Refugees. Studies have shown that because of better integration packages for refugees as against economic migrants many would rather claim to be refugees or asylum seekers so that they can enjoy more favourable integration packages.38

Pull factors have been identified as those factors in the destination country that pull migrants to it, these range from political stability, stable and growing economic environment, availability of jobs, modern infrastructure, higher life expectancy, access to justice and human rights. De Haas posits that there is usually urban ward migration where more commercial business takes place.39 A lot have also migrated on technically incorrect information, based on ideas, perception and deceptive information from human traffickers.


Nigeria like most developing countries of the world has faced a myriad of political problems. This has in no small way imparted on its development. The country’s dependence on oil has made it impossible to diversify its economy which would be much needed to provide employment for its ever growing population estimated at 170 million people. The situation was not too different in the 1980’s: it was indeed worse with the military in power. Growth and development was stalled and high level of inflation meant that people were not able to meet their basic needs. Changes in the economic and political policies of the country resulted in changes in the pattern of migration in Nigeria. One important change in particular is the adoption of the Structural Adjustment Programme (SAP) in 1986. This dictated a shift from the official policy of full employment to substantially reduced government spending on critical services, such as health, education and housing.40 This government policy encouraged many Nigerians...
to engage in international migration to affluent and developed countries in search of better life conditions. Also political persecutions the military government against perceived enemies, this led many to seek refuge in other countries. Those who migrated were mostly of the educated class who sought countries were their services will be adequately paid for. An estimation by DRC\textsuperscript{41} says that 1,041,284 million Nigerians live abroad mostly in Organization for Economic Cooperation and Development (OECD) countries. 10.7\% of the highly skilled population who were trained in Nigeria work abroad with 83\% of those emigrants from Nigeria in the United States of America being highly skilled as well as and 46\% of emigrants to the United Kingdom being highly skilled. An averagely 64\% of Nigerian emigrants possess a tertiary certificate.\textsuperscript{42} An estimated 14\% of Nigerians trained in the medical field in Nigeria live and work in the United States and the United Kingdom.\textsuperscript{43} Nigerian emigrants for educational purpose have been on the rise since 2002.\textsuperscript{44} This is the result of government’s reduced spending on the educational sector that has brought about friction between government and the academic unions because of their demand for improved government spending on education. They sought to put pressure on government through strike actions that has led to lose of academic sessions. Between 1988 and 2013 the Academic Staff Union of Universities had embarked on sixteen strike actions.\textsuperscript{45} With students staying at home for long periods when they ought to be studying in school, parents who could afford it began sending their children abroad for studies. The economic hardship that set in by reason of the SAP and the limited employment opportunities were the genesis of this out migration.\textsuperscript{46}

4. Theories of Prostitution and Edo Historical Perspectives.

\textit{Literature on the history of prostitution in Edo is quite scarce, but we will try to understand Edo people’s perception of prostitution from the point of view of theories of prostitution and the communal system that existed among the Edo people of pre-colonial times. Garner defined prostitution as the act or practice of engaging in sexual activities for money or its equivalent.}\textsuperscript{47} Prostitution is the act of engaging in sexual activity, usually with individuals other than a spouse or friend in exchange for immediate payment in money or other valuables. Prostitutes may be of either sex and may engage in either heterosexual or homosexual activity, but historically most prostitution has been by female with males as clients.\textsuperscript{48} So much talk about prostitution being the oldest profession, Ayittey, espousing African indigenous social system by citing Kenyatta, states that sexual intercourse between a man and his wife(s) is looked upon as an act of reproduction, not merely as the gratification of bodily desire. His research is

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situated in Gikuyu community and it typically represents African perception of the sexual relationship that exists between a man and a woman and the Edo people are no exception.49

Alobo and Ndifon discuss three theoretical perspectives of prostitution, the functionalist theory in the works of Kinsley Davis he gives two parallel ideologies of prostitution

1. Sexual morality that condemns prostitutes

2. The existence of prostitution strengthening morality.

The second is the social psychological theory which holds that certain factors causes women to become prostitutes, traumatised childhood, like parental neglect and child abuse, the notion that prostitution can be a source of wealth and livelihood, and finally unemployment or pressure from peers and pimps.

The feminist theory which holds that society has a sexiest view of women that is why the law goes only after a woman in a crime committed by both gender. And the societal encouragement of the patriarchal gender stratified system which dominates and exploits the female gender thereby promoting prostitution.50

The ancient Edo people lived in small close communities suitable for administration and this were divided into three age grade edion the elders, ighele the adults and iroghae the youths. The communal system here meant that the basic needs of individuals were met with the age group. Ayittey posits that in Africa primary duty is owed to the community, persons exist only in relation to another. Citing Jackson he explains that the essence of moral responsibility springs from the fact that a person’s action affects and implicates all those who are related to him. He emphasised the importance of ‘we’ as against ‘I’ which implied unity and cooperation. This unity meant that all had access to livelihood, shelter and feeling of belongingness which run contrary to the social psychological factors that produce prostitutes. Ayittey emphasise further the African indigenous social system by quoting, Williams who outlines these communal lifestyle as “rights” (a) to equal protection of the law (b) right to own a home (c) right to livelihood through land distribution, (d) right to aid in time of trouble and other rights.51

The close communal life style of the ancient Edo people would have made it difficult to find a clandestine profession like prostitution existing among the people, there were traditional provisions that made it possible for widows to be remarried within her spouse family and be catered for. The changes that took transformed the traditional conservative Edo society may not be unconnected with Benedict Anderson’s discourse on state and nations where he talks about the transformation of society from agrarian practice to industrialization and increase in population. That the creation of the state as we know it today, gave rise to breakdown of communal society and created room for individualism that promotes social ills which prostitution is one of them.

5. Edo State of Nigeria and Italy and Europe

50 Ibid.
51 Ibid.
The demand for farm labourers in the southern part of Europe led less educated Nigerians to countries like Italy and Spain in Europe during planting and harvest periods to work in tomato and fruit farms. Braimoh states that “the first generation of Edo women and girls who went to Italy initially went abroad to conduct legitimate business such as the buying and selling of goods which included clothes shoes and jewelleries. However, in the process of engaging in such business, a lot of women became compromised and augmented their business with prostitution. Proceeds from the farm work was meagre when compared with proceed from prostitution. Many female immigrants started to supplement farm labour with prostitution. The high demand for sex workers in Europe and the relatively higher remunerations was the main reason behind this. Hughes classified the demand for prostitutes into three categories: users or purchasers of sex, profiteers from selling sex and social cultural attitudes towards sex. Users or purchasers refers to persons who pay prostitutes to render a sexual service; brothel owners and pimps comprises of profiteers from selling sex and academics and media reporting and writing about prostitutes form part of socio-cultural attitudes towards sex, Hughes By extension from Hughes analysis the highest profiteers from sex trade are the madams and traffickers as we will see with the case of prostitutes and victims travelling from Edo to Italy. These women were inspired by socio-cultural attitudes towards sex and the sex industry in Europe and the cover of distance and away from the watchful eyes of those who will question their actions many were lured into this trade.

The proceeds from prostitution became too good to hide. Many women became transnational travelling to and from Europe under the pretext of buying goods from Europe and selling them in Nigeria. But underneath recruiting and encourage other friends or family members to take to the trade as it was seen as a great money spinner. Nigerian naira (means of financial exchange in Nigeria) had been devalued against international currencies because of the implementation of the SAP policies. More international currencies meant much more naira.

Other multiple co-existing social psychological factors are illiteracy and the discrimination and violence faced by women in Nigerian society with the societal acceptance of polygamous family system. A man is entitled to take as many wives as he can cope with. Many go into polygamy without counting the cost and this may lead to the disruption of support systems. Many women are left with no choice but to fend for their children because the man has abdicated his responsibility to his family because of lack of employment or because a sense of lack of commitment to his duties as a father.

Life expectancy is 47.3 years for men and 48.3 for women, this has led to early loss of family members. Many women experience early widowhood and accordingly they have to provide for their families by

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56 M. D. Hughes, Best practices to address the demand side of sex trafficking. Rhode Island: University of Rhode Island. 2004.
57 Schulze Erika (Ed), Sexual Exploitation and Prostitution and its Impact on Gender Equality, European Parliament: Directorate General for Internal Policies; Policy Department, Citizens Rights and Constitutional Affairs, EU Brussels 2014. (In Nigeria there yet to be any form of legal consideration for regulating the sex trade based on fundamental human rights.)
any means possible. Others factors are the desire for greater autonomy and adventure, divorce, love, and family expectations.

Restrictive migratory policies in Europe made it difficult for many to get access to visas. They are then likely to turn to illegal agents to procure travel documents to migrate to Europe. Corruption among Nigerian officials both immigration officials and others working at the airports was instrumental to the growth of the sex trade and human trafficking in Edo state Nigeria. To a large extent a ‘strong respect for and belief in certain aspects of traditional African religion has in no small way influenced the growth and secrecy needed for this “business” to thrive.

Many were lured, cajoled or forced by poverty into the sex trade. It grew into a network, a cartel which includes recruiters, traffickers’ madams at home and abroad, voodoo priests, intimidators, pimps and victims. What started as secret additional ways to acquire more foreign currency has grown in leaps and bounds to and evolved into international challenge involving drugs and prostitution, connecting illegal trade across continents and immoral and illegal alliances among mafia gangs.

6. Nigeria and Sex Trafficking

The Palermo protocol of the UN to prevent, suppress and punish trafficking in persons especially women and children, defines trafficking in persons as, 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 afore-mentioned means have been used. The recruitment, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered’ trafficking in persons,’ even if it does not involve any of the above listed means. “Child” shall mean any person less than eighteen years of age (Art. 3). This was supplemented to the UN Convention against Transnational organised Crime. According to the United States Department of State Trafficking in Persons Report 2015 ‘Nigeria is a source, transit, and destination country for women and children subjected to forced labour and sex trafficking’ The trade of prostitution and drugs has been on-going since the 1980’s. The proceeds of crime have made it an established and growing industry that shows no sign of going away soon.

61 Agbu Osita, Re-visitng Corruption and Human Trafficking in Nigeria: Any Progress?
The source of the growth of this industry is simply its ability to reproduce itself according to this report by European Asylum Support Office EASO country of origin information on sex trafficking in Nigeria, new ‘madams’ in the industry have themselves been victims who starting off as prostitutes working on the streets, indebted to their madams who transported them to Europe or bought them over from peddlers or traffickers and became madams after repaying off their debt, the amount often dictated by their “madams.”

Europol posits that, victims often become members of the criminal groups exploiting them, ultimately assuming the role of a “madam” and exploiting other victims they (new madams) have recruited or bought off from traffickers. In turn, this cultural novelty reduces the likelihood that victims will cooperate with law enforcement.

Carling designates this system a ‘self-reproducing organisation.

In 2009, the United Nations Office on Drugs and Crimes (UNODC) estimated the number of victims of sex trafficking from West Africa, at 3,800-5,700 per year among which Nigeria constituted the main source country. In the period between 2007-2012 Nigerian victims accounted for more than 10% of the total number of detected victims in Western and Central Europe, making this route the most prominent trans-regional flow in this sub region. Recent reports also by (UNODC) on Global Trafficking in Persons (2014) identify young women from Nigeria to Europe for the purpose of sexual exploitation as one of the most persistent trafficking flows. In a Eurostat report for the reference period 2010-2012 regarding absolute numbers of registered victims of human trafficking in the European Union (EU), Nigerians were amongst the top five non-EU citizens Regions also covered in this report are statistics from the Netherland, France and the United Kingdom. Italy and Spain appear as the primary destinations of trafficked Nigerian women, from where they are trafficked to northern, central, and eastern European countries. Europol identifies Nigerian organised crime related to trafficking in persons as one of the greatest law enforcement challenges to European government. The phenomenon of human trafficking and international sex trade is not peculiar to Nigerian alone it indeed is a global challenge which is a product of social inequality and poverty which creates vulnerability among certain groups in the society. Barner and others in this discourse discusses the social inequalities and vulnerabilities that expose victims to this phenomenon in various regions in the world.

7. Sources and Profiles of Victims.

Nigeria is a source, transit, and destination country for women and children subjected to forced labour, sex trafficking and organ harvesting according to the United States Department of State for Trafficking in Persons Report from 2015. In many cases, internal trafficking will constitute a first step to

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68 J. Carling, Trafficking in Women from Nigeria to Europe, (1 July 2005).
70 UNODC, Global Report on Trafficking in Persons 2014, pp. 56-57.
71 The other countries of citizenship for registered victims were: Brazil, China, Viet Nam and Russia. See: Eurostat, Trafficking in Human Beings, 2015.
72 Eurostat, Trafficking in Human Beings, 2015, cited in EASO country report or Nigeria sex trafficking.
76 Ibid.
trafficking out of Nigeria.\(^78\) Edo state in Nigeria represents the epi-centre for the recruitment for human trafficking to Europe. According to Beatrice Jedy Agba Executive Secretary of the National Agency for the Prohibition of Traffic in Persons and Other Related Matters (NAPTIP) “it is strongly concentrated in Edo state”.\(^79\) This was also reiterated by the founder, Committee for the Support of the Dignity of Women (COSUDOW) in an interview by Land info of Norway in 2006 said pioneers in human trafficking to Europe with evidence of success were from Edo State.\(^80\) Participants in this illegal trade all originated from Benin City, the capital of Edo State and nearby villages. Participants here refers to all those linked with the trade comprising, recruiters, traffickers, madams at home and abroad, voodoo priest and the unfortunate ones, the victims. Not all participants are Edo speaking people. Origins here could mean those resident or having friends or relatives resident in Edo state. Estimates show that 85% of Nigerian women selling sex in Europe travelled from, but did not necessarily originate in Benin City.\(^81\) The focus of recruitment have shifted from the main city to the rural areas this is due to the clamp down by NAPTIP and other law enforcement agencies on the activities of traffickers, and the level of awareness created by NAPTIP among residents in Benin city, but this is not to say that city recruitment is completely ruled out. In the poverty stricken areas rural around Benin parents may be more inclined to put pressure on their young daughters to yield to the recruiters so as to change the family status. After recruitment from rural areas and the usual ritual of oath taking administered by the juju/voodoo priest women report that they were then taken to major cities, particularly to Benin City and to Lagos.

Recruitment takes place in places where there are possibilities of establishing relationships these include includes the markets where women work, churches or schools and within meeting groups like progressive unions. Women may also be recruited from other states, especially Delta State, but also from other southern states of Abia, Anambra, Akwa Ibom, Cross River, Ebonyi, Ekiti, Enugu, Lagos, Oyo, Osun, Ondo, Imo or from the more central states of Kaduna and Plateau. In Benin City of where, one can hardly find an extended family that does not have a family member, mostly women, who migrated to Europe.\(^82\) It is note-worthy that not all were trafficked or migrated for the purpose of sex trade

8. Level of Awareness

The initial group of women in international prostitution in the 1980s were predominantly married or separated, searching for income to support their families. Recent recruitments are young girls who are between the age of 17 and 28 years.\(^83\) Recruitment of minors has been on the increase because adult women especially in cities are more aware of the risks to which they are likely to be exposed, especially with the level of awareness that has been created through the media by NAPTIP and by women groups fighting against this menace. Young girls are easier prey lured by the promises of fast success by recruiters. The age declared by girls and women in the course of this journeys are unreliable as age is

\(^{79}\) In June 2014, the United States government conferred the award of 2014 Trafficking in Persons Report Hero to the Executive Secretary of NAPTIP, Beatrice Jedy-Agba, NAPTIP Boss Emerges 2014 Trafficking in Person’s Hero, June 2014 EASO.
\(^{80}\) Sister Florence was interviewed during the Land-info (Country of Origin Information Centre, Norway) fact-finding trip to Nigeria in March 2006. See: Land-info, Trafficking in Women, May 2006, p. 13. For information on COSUDW see its website at: http://cosudowlagos.org/home/.
\(^{82}\) S. Plambech, Points of Departure, 2014, p. 39.
declared according to the need of the recruiter. Age is increased to avert the watchful eyes authorities or indeed decreased for “marketing purposes”.84

The only period residents in Edo state can claim ignorance about trafficking for the purposes of prostitution, to Italy and other parts of Europe was in the 1990’s. A lot were actually tricked into thinking that they were travelling to Europe to work as hair dressers in salons, baby sitters or as domestic househelps, working in factories, restaurants, beauty parlours or have been promise a modelling career.85 By the time news of the activities of these cartels began to filter down to Nigeria and the level of campaigns that government initiated since that time, it is evident that all should have been informed about the consequences of becoming victims of traffickers. Nowadays people are aware that women go to Europe to work as prostitutes.86 It should be noted here that Edo people do not normally accept prostitution or promiscuous behaviour. Women have been ostracised for this both by family and by society according to Aghatise and Braimoh. Despite remittances from sex trade abroad prostitution is still not an acceptable behaviour for the Edo society. Poverty and limited choices are the primary reasons why families cannot say no to income from prostitution. The financial success of these women portrayed by their large houses exotic cars and jewellery is one of the reasons why they become role models for younger girls, especially uneducated ones. Many are aware before they leave Nigeria that they will end up as prostitutes but are ignorant of the conditions, the harsh atmosphere, the exposure to violence and the enormity of the debt.87 These young girls consider two to three years working hard as prostitutes to repay the debts to their facilitators88 as being worth it to alleviate themselves and their families from poverty.

9. Efforts by the Government to Stem the Tide

Efforts by the Nigerian government to end the social menace of trafficking in persons, have been enormous and consistent, from raising awareness to discouraging its patronage and to the punishment of those found to be culpable of the act. A rehabilitation programme for victims caught in the act of prostitution Europe and repatriated back to Nigeria. One major instrument that the government has created to tackle human trafficking is NAPTIP the National Agency for the Prohibition of Trafficking in Persons and other related matters. Its mandate includes investigation, prosecution, monitoring, counselling, rehabilitation, awareness raising, research, and training.89 The Agency works both as a

84 UNICRI, Trafficking of Nigerian girls in Italy, April 2010, pp. 41-42.
social tool for creating awareness and legal tool for apprehending and prosecuting offenders. NAPTIP working with other stake-holders uses all forms of media to create awareness of the public about the activities of traffickers. Television and radio announcements, talk-shows are broadcast in various local dialects and Pidgin English (a form of corrupted English spoken by majority of residents popular among the uneducated). Billboards warning people about the traffickers can be found in the major city centre (Benin City) and parts of the city where persons who have immigrant population and their relatives are concentrated. The Nigerian movie industry (Nollywood) has been very active in raising awareness of the dangers victims are exposed to trying to make it abroad.

NAPTIP along with other stakeholders developed a National Plan of Action (2009-2012) structured on the four theme areas of Prevention, Protection, Prosecution and Partnership, called the 4 Ps Strategy. This was followed by a Strategic Plan (2012-2017) focused on tackling human trafficking in five broad areas which are; strengthening law enforcement and prosecutorial response, reinforcing public enlightenment, using various mediums, including movies, drama and documentaries to create greater awareness on the real impact of trafficking, expanding platforms for victim protection and assistance and addressing factors which increase vulnerability, strengthening partnerships at national, regional and international levels and improving organisational development.90

Also of relevance are the ratification in 2000 and 2001 of the United Nations Convention against Transnational Organized crime and its supplementing protocol on trafficking in persons in 2003, by the Trafficking in Persons (Prohibition) Law Enforcement and Administration Act which was amended in 2005 and 2015 to increase penalties for trafficking offenders. This act is applicable to the 36 states of Nigeria and the federal capital territory (FCT) Abuja.91

10. Remittances and their Positive Impact

The International Monetary Fund IMF defined workers’ remittances as international transfer of funds sent by migrant workers from the country where they are working (and have stayed for more than one year to be considered resident in the countries) to their family members in their countries of origin. Similarly, the IMF Balance of Payment Manual 5 (BPM5) defines remittances as the portion of international migrant workers earning sent home from the country of employment to the country of origin. Solimano92 considers remittances as that portion of migrants’ earnings sent from the migration destination to the place of origin. Remittances can be sent in cash or kind. The Central Bank of Nigeria (CBN) also shares this position as it considers remittances as both financial and non-financial resources freely sent to migrants’ households in the home countries. They contribute immensely to financing domestic investment as well as providing sustenance funds for dependent relatives, thereby alleviating partly poverty in developing countries, kind refers to here to items such as food, jewellery, books, medicine, clothing, electronics and cars meant for immediate use by the recipient, but alternatively they are sold to acquire funds for other uses. Remittances are also considered as unilateral transfers and so they do not create any future liabilities such as debt servicing or profit transfers. So remittances are

generally less volatile, hence they are a more dependable source of funds in some countries than private capital inflow. Remittances from abroad play an important role in poverty reduction. Many of the migrant girls interviewed by Braimoh in 2013 confessed their willingness to take the risk of being trafficked because of the desire to salvage their families from the grip of poverty. Many can afford to go to school, have a decent meal, have access to health care and live in decent housing because of a relative living abroad.

Remittances are commonly used to acquire housing, land, financial assets and to fund businesses in the community of migrants’ countries of origin. This may be due to the fact that these are more durable investment and require little or no monitoring. It can also be argued that migrants’ investment decisions are closely related to their return migration plans. This accounts for the many modern houses in Benin City today especially in suburbs and densely populated areas. Prior to migration trends Benin City had more of mud houses basically overcrowded with extended families living together. This brought a lot of strife among family members, due to overcrowding.

There is no denying the fact that remittances from emigrants have impacted on the life of many residents in Edo state and in Nigeria in general. Remittance income does not benefit only individual recipients; it benefits the local and national economies in which they live. Indeed, the spending allowed by remittances has a multiplier effect on local economies as funds subsequently spent create incomes for others and stimulate economic activities in general. Beyond such multiplier effects, however, are other factors conducive to economic growth and stability. Remittance received from migrants abroad is one of the largest sources of external finance for developing countries. The true size of remittances cannot be truly documented most of the data on remittances are from formal channels. Unrecorded flows from informal channels can double the data from formal flow if documented. In Edo state for example the informal channel of flow of remittances is ultimately large as bureau de change offices which double as pay-out agents are found in various places within Benin City. These channels are believed to be as large as the formal sectors of Western Union and Money Gram. Freund and Spatafora carried out studies on literature on informal remittances for more than 100 developing countries on shadow economies. Findings revealed that informal remittances amounted to 35-75 % of formal remittances to these countries. But results vary from country to country. Informal remittances to Eastern Europe and Sub-Saharan Africa are higher than those to East Asia and the Pacific. The reasons put forward by Orozco from researches from remittances to Latin America is the percentage cost of sending money through formal channels which is much higher than informal channels.

11. Consequences of Migration and Remittances on the Victims and Youth Population.

Regardless of the seeming glamour displayed by so called successful victims turned madams, negative consequences of human trafficking outweigh positive impact of remittances. Human rights violations

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93 Dillip Ratha & Sanket Mohapatra & Ani Silwal, Outlook for Remittance flow 2010 to 2011; Remittance outflow to developing nations remained resilient in 2009 expected to recover during 2010-2011, Migration and Development Brief; Migration and Remittances Team Development Prospect Group, World Bank, 2010.
94 OECD International Migration Outlook 2008.
96 Ibid.
and deterioration of mental and physical health are some of the negative experiences victims of human trafficking go through during and after the process of trafficking. Free will, human dignity and an inability to make their own decisions are some of the human rights violations experienced by victims at the hands of human traffickers. The stigmatization associated with prostitution in Edo state can also be a source of social-psychological disorder for ex-prostitutes or victims especially those deported without anything to show for their travel. As stated earlier, it is the level of poverty that throttles many families from saying no to proceeds of prostitution, but prostitution is still not an acceptable norm in the Edo society.

The glamour and wealth displayed by migrants’ are a source of inspiration for many young people to migrate to Europe. This accounts for why many both male and female are determined to make the journey at all cost. Youth population with the desire to travel are no more inclined to get an education as traffickers do not specify educational qualification as a prerequisite, as such many have lost the desire to get an education or acquire skills. Youth populations, both male and female are on their way through various unconventional routes to get to Europe. Many lose their lives on the way to Europe. Cultism and drug trafficking is common among young men from Nigeria resident in Italy and Spain many have been killed because of this. Mafia gangs promote cultism because these young men are vulnerable tools in their hands for their illicit trade in drugs and prostitution. Many Nigerian youths who were deported from Libya waiting to cross to Europe became a social menace in the society. Prostitutes deported from Europe back to Nigeria become traumatised and have to receive a lot of psycho-therapy to fit into society again. More often because of the shattered dreams of not being able to come back glamorous they distance themselves from the family which was the consideration for making the journey in the first place. This negative impact of traffickers information and activities on the youth population cannot be over-emphasised much need to be done to get them out of business or neutralise information they pass to young men and women so that whole populations will not be lost to unrealistic dreams because of their activities.

12. Conclusion and Recommendation

The Nigerian nation have been going through political instability since the first coup d’état in 1966. After its independence from colonial rule in 1960 a better part of its political existence has been in the hands of the military spanning over 30 years. This accounts for the high level of mismanagement of resources, corruption, nepotism, infrastructural decay, unemployment youth restiveness and poverty. However for the decision by many to immigrate to places where there are better living conditions and opportunities for work, the level of poverty would have been more extreme. This could have led to some form of implosion. Looking at the figures from remittances it is obvious that it is a life saver. Government should not discourage immigration but search for ways to take traffickers out of the business. This could


Marc Herman, From Africa to Europe: A surprisingly Dangerous Journey, December 2013, http://www.takepart.com/article/2013/12/03/dangerous-journey-senegal-spain;


be done by opening up channels of communication with countries needing labour. This can create job opportunities for its large and growing youth population and prevent their exposure to crime and illiteracy which the traffickers subject them to. Also educating people on how they can directly have access to travel without needing to go through traffickers.

Countries experiencing out migration and the international community in general need to begin to ask is how much of these remittances come from illicit and illegal sources. From evidences above we saw how the initial group of migrants to Italy and Spain abandoned farm work and augmented transnational business with prostitution. No doubt large amount of these remittances are from illegitimate and morally decadent sources, but on which cost? At the cost of allowing a group of traffickers, madams and mafia groups breed for our society cultists and prostitutes, convincing them, that this is all life is about? Increased efforts should be made to stop these groups of people with governments adopting pro-active steps to fight against traffickers. And government should engineer the right policies to educate the people, provide employment and open up legitimate migration channels.

Migration is significantly reshaping the traditional social and economic structures of rural communities in Edo state in both positive and negative ways. Braimoh has identified illiteracy as the major factor driving victims and their families to yield to traffickers. For many years Nigeria’s budget for education has been relative low this has accounted for why majority of the poor people could educate their children. The Mohammadu Buhari government identified this and takes steps to deploy teachers to the rural area to teach. Yet much more still has to be done, the Nigerian education system suffered from the many years of political instability and infrastructural decay. This led to falling educational standards which affected teachers training colleges in the country. Those in teaching profession today may not have had the prerequisite training needed to teach. Therefore many may not have needed tools for passing knowledge. So a retraining of teachers for basic pedagogic skills may be necessary.

Guidance and counselling units in schools need to be strengthened to help in this fight, as the girls under family pressure could talk with guidance counsellors.

Welfare from governments has eluded Nigerians for many years of governance, although it could be a way of alleviating many from poverty. It can go a long way in also getting the citizen to trust in the government, by showing that it cares for their welfare. The fight against traffickers has been unsuccessful because a lot of people do not have a real choice. As step in the right direction the new government is introducing welfare for Nigerians.

The fight against illicit and illegal transnational crimes is not a fight of the international community all hands must be on deck for information sharing, and expert advice sharing to stop or at least reduce this trend drastically so that the many benefits of immigration will not be high-jacked by a few unscrupulous actors.

