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United Nations Office on Drugs and Crime

Toolkit to Combat Smuggling of Migrants

Tool 1

Understanding the smuggling of migrants

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Preface

Introduction

Virtually every country in the world is used by profit-seeking criminals for smuggling migrants—either as a country of origin, a transit country or a country of destination (or a combination thereof). Smuggled migrants are vulnerable to exploitation and their lives are often put at risk: thousands of people have suffocated in containers, perished in deserts or drowned at sea while being smuggled to another country. The smuggling of migrants and the activities related to it generate enormous profits for the criminals involved and fuel corruption and organized crime.

The Conference of the Parties to the United Nations Convention against Transnational Organized Crime in its decision 4/5 on the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, welcomed the efforts undertaken to provide guidance and information on best practices in the areas of training and capacity-building, as well as awareness-raising strategies to prevent and combat the smuggling of migrants. The Toolkit is an example of such efforts.

The Smuggling of Migrants Protocol sets out three clear goals:

- Preventing and combating the smuggling of migrants
- Protecting the rights of smuggled migrants
- Promoting cooperation among States parties to those ends

The goals of this *Toolkit* are the same. The promising practices and recommended resources included in it are by no means an exhaustive collection of successful, creative and innovative responses to addressing the smuggling of migrants. However, they provide examples of such initiatives and demonstrate the range of resources available to those involved in efforts to counter the smuggling of migrants.

The *Toolkit* is intended to provide guidance, showcase promising practices and recommend resources in thematic areas.

It is hoped that the *Toolkit* will inspire and help policymakers, law enforcement officers, judges, prosecutors, victim service providers and members of civil society to play their part in the global effort to combat the smuggling of migrants.

How to use the Toolkit

The *Toolkit* is intended to assist those working to prevent and combat the smuggling of migrants. It has been structured to serve a two-fold purpose:

The *Toolkit* as a whole provides an overview of the immense and multifaceted task of combating the smuggling of migrants.

Through the stand-alone tools contained in it, the *Toolkit* provides guidance on specific aspects of responding to the smuggling of migrants.

Each tool has been structured so that it can be consulted independently of the others; users who have an interest in a particular aspect of the smuggling of migrants can refer to those tools—or sections therein—that are of relevance. Cross references have been provided throughout to direct users to other sections that may be relevant.

Where possible, websites are indicated where users can either consult the complete text of documents referred to or find further information on a given topic. Users who do not have access to the Internet are encouraged to contact either the United Nations Office on Drugs and Crime (UNODC) or the organization concerned to arrange to receive a hard copy of the relevant resource.

The beginning of each tool contains an overview of its content. The full text of the Smuggling of Migrants Protocol and a glossary of some of the key terms used throughout the *Toolkit* are included in the annexes.

Finally, optimal benefit will be derived from the *Toolkit* if users contribute to its continual improvement. Therefore, a feedback form is included in the annexes. By sending in the completed form, users can contribute to the improvement of the next edition of the *Toolkit*.

Anti-Human Trafficking and Migrant Smuggling Unit
United Nations Office on Drugs and Crime

Contents

Preface iii

Acknowledgements vi

Overview 1

Understanding migration

1.1 Migration and development 3
1.2 Root causes of migration 9
1.3 Migration and gender 13
1.4 Migration and the environment 16
1.5 Migration and health 18
1.6 Migration and the global financial crisis 21
1.7 The smuggling of migrants as a migration phenomenon 25

Understanding the smuggling of migrants

1.8 What is the smuggling of migrants 27
1.9 What cannot be characterized as the smuggling of migrants 29
1.10 Related concepts: refugees and asylum-seekers 31
1.11 Related concept: trafficking in persons 33
1.12 Distinguishing between the smuggling of migrants and trafficking in persons. 38
1.13 The impact of smuggling on smuggled migrants 43
1.14 The smuggling of migrants as a deadly criminal business 45

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Overview

Tool 1, entitled "Understanding the smuggling of migrants", places the smuggling of migrants within the context of migration. Tool 1 is divided into two sections. The first section, entitled "Understanding migration", is further subdivided into subsections as follows:

1.1 examines the positive contributions made by migration to human development;

1.2 flags some key causes of migration;

1.3 highlights some gender-related aspects of migration;

1.4 discusses the impact of environmental conditions on the movement of people around the world;

1.5 considers some health issues relevant to migration;

1.6 highlights some key assumptions that can be made regarding the impact of the global financial crisis on migration;

1.7 places the smuggling of migrants within the context of the broader movement of people.

The second section, entitled "Understanding the smuggling of migrants", is divided as follows:

1.8 examines the technical definition of "smuggling of migrants" as set out in the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention against Transnational Organized Crime;

1.9, on the other hand, discusses some of the activities that are not forms of smuggling of migrants;

1.10 and 1.11 consider phenomena related to the smuggling of migrants: 1.10 focuses on refugees and asylum-seekers and 1.11 on trafficking in persons;

1.12 distinguishes between the smuggling of migrants and trafficking in persons;

1.13 discusses the impact of the smuggling of migrants on the migrants themselves;

1.14 aptly portrays the smuggling of migrants as a criminal business, one that results in the loss of many lives.

Understanding migration

1.1 Migration and development

Migration is one of the great driving forces of human progress and development. The movement of people worldwide has resulted in many stories that have contributed to the shared history of humanity. People have moved all over the globe for a variety of reasons: to increase their economic opportunities; to provide their children with an education; to found a family; to embark on an adventure and to seek protection. Migration, in turn, has led to the proliferation of languages, cultures, cuisines and ideas on an international scale.

Global migration as it exists today is one of the massive by-products of globalization; the exploitation of this phenomenon by profit-seeking criminals has given it a darker side. The criminal activity of smugglers of migrants undermines the capacity of States to safeguard their own sovereignty and thereby reduces the opportunities available to migrants to move to other countries legally and safely. The cost of the smuggling of migrants is often measurable in terms of lives lost.

Positive links between migration and development

The money that migrants send home to family and friends in developing countries can have a positive impact on communities. Such remittances were estimated to have totalled $232 billion in 2005.

This money is used primarily to purchase consumer goods, stimulate local economies and help start small businesses, and this generally has a multiplier effect on national incomes. Through the receipt of remittances, many poor people can have access for the first time to financial services, such as those offered by banks, credit unions and microfinance institutions.

The report of the Secretary-General to the General Assembly on the relationship between international migration and development (A/60/871) (see "Recommended resources" below) raised the following points:

> "50. The lure of a well-paid job in a wealthy country is a powerful driver of international migration. The attraction has intensified as income differentials among countries continue to grow. This holds true not only regarding the large and growing differentials between high- and low-income countries, but also with regard to the more dynamic and the less dynamic developing countries.
>
> "51. Many advanced and dynamic economies need migrant workers to fill jobs that cannot be outsourced and that do not find local workers willing to take them at going wages. Population ageing also underlies this growing demand, as it gives rise to deficits of workers relative to dependants. And as younger generations become better educated, fewer in their ranks are content with low-paid and physically demanding jobs.

"52. Migration may reduce wages or lead to higher unemployment among low-skilled workers in advanced economies, many of whom are themselves migrants who arrived in earlier waves. However, most migrants complement the skills of domestic workers instead of competing with them. By performing tasks that either would go undone or cost more, migrants allow citizens to perform other, more productive and better-paid jobs. They also maintain viable economic activities that, in their absence, would be outsourced. By enlarging the labour force and the pool of consumers and by contributing their entrepreneurial capacities, migrants boost economic growth in receiving countries.

"53. At the point of origin, deeper poverty does not lead automatically to higher migration. The poorest people generally do not have the resources to bear the costs and risks of international migration. International migrants are usually drawn from middle-income households. However, when migrants establish themselves abroad, they help friends and relatives to follow and, in the process, the costs and risks of migration fall, making it possible for poorer people, though not the poorest, to join the stream. Low-skilled migration has the largest potential to reduce the depth and severity of poverty in communities of origin.

"54. Mounting evidence indicates that international migration is usually positive for countries both of origin and of destination. Its potential benefits are larger than the potential gains from freer international trade, particularly for developing countries."

Negative links between migration and development

"17. The experience of migration has also evolved in some less positive ways. Migrants of both sexes are increasingly exposed to exploitation and abuse by smugglers and traffickers, sometimes losing their lives. Others find themselves trapped behind walls of discrimination, xenophobia and racism as the result of rising cultural and religious tensions in some societies. International cooperation can play a crucial role in protecting people against such evils."

Policy agenda: improved international cooperation through co-development

"71. Member States now share a core set of migration-related goals which include: enhancing the development impact of international migration; ensuring that migration occurs mainly through legal channels; ensuring the protection of the rights of migrants; preventing the exploitation of migrants, especially those in vulnerable situations; and combating the crimes of smuggling of migrants and trafficking in persons. Governments should recommit to these goals and develop a strategy based on co-development to reach them."

Recommended resources

European Union-Africa Ministerial Conference on Migration and Development, Tripoli, 22 and 23 November 2006

The European Union-Africa Ministerial Conference on Migration and Development brought together Governments of European Union member States and States across

the African continent. The Conference was held for the purpose of discussing a comprehensive agenda of issues of mutual interest in the area of migration and development, as a basis for a strengthened partnership in this area, based, inter alia, on the African Common Position on Migration and Development.

More information is available from: www.africa-union.org/root/AU/Conferences/Past/2006/November/SA/EU/EU-AU.htm.

Global Forum on Migration and Development

On 14 and 15 September 2006, a High-level Dialogue on International Migration and Development was held within the framework of the General Assembly of the United Nations. Over 140 Member States discussed the global implications of international migration and the mutually beneficial interaction between migration and development. The High-level Dialogue made explicit the close relationship between development policies and migration policies, and reaffirmed the fact that good migration governance can contribute to development and that development policies can have an impact on migration. This complex relationship is of growing importance as the level of migration increases every year.

As a result of these discussions, a large number of United Nations Member States expressed their interest in continuing the dialogue on migration and development by means of an informal, voluntary and State-led global forum.

The first meeting of the Global Forum on Migration and Development was held in Brussels from 9 to 11 July 2007. The governmental discussions on 10 and 11 July were preceded by a meeting of civil society representatives on 9 July. This marked the start of a new global process designed to enhance the positive impact of migration on development (and vice versa) through the adoption of a more consistent policy approach, identifying new instruments and best practices, exchanging know-how and experience about innovative tactics and methods and, finally, establishing cooperative links between the various actors involved.

The second meeting of the Global Forum on Migration and Development, which was held in Manila from 27 to 30 October 2008, revolved around the central theme "Protecting and empowering migrants for development".

The third meeting of the Global Forum on Migration and Development, held in Athens from 2 to 5 November 2009, had as its overarching theme "Integrating migration policies into development strategies for the benefit of all".

For more information, see: www.gfmd-fmmd.org and www.gfmdathens2009.org.

Global Migration Group

The Global Migration Group is an inter-agency body bringing together heads of agencies to promote the wider application of all relevant international and regional instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better-coordinated approaches to the issue of international migration. The Global Migration Group is particularly concerned with

improving the overall effectiveness of its members and other stakeholders in capitalizing upon the opportunities and responding to the challenges presented by international migration.

For more information about the Global Migration Group, see Tool 4, subsection 4.15, and visit www.globalmigrationgroup.org

High-level Dialogue on Migration and Development

The High-level Dialogue on International Migration and Development was held on 14 and 15 September 2006 at United Nations Headquarters in New York. In its resolution 58/208 of 23 December 2003, the General Assembly had decided to devote a high-level dialogue to international migration and development during its sixty-first session in 2006. The purpose of the high-level dialogue would be to discuss the multidimensional aspects of international migration and development in order to identify appropriate ways and means to maximize its development benefits and minimize its negative impacts. Additionally, the high-level dialogue focused on policy issues, including the challenge of achieving the internationally agreed development goals, including the Millennium Development Goals.

More information about the High-level Dialogue on Migration and Development is available at www.un.org/esa/population/migration/hld/index.html.

International Organization for Migration

International Organization for Migration (2009). *The MIDA Experience and Beyond*. Geneva.

Over the past 10 years, the experience of the International Organization for Migration (IOM) in assisting Governments through programmes, initiatives, studies and numerous conferences on Migration for Development in Africa (MIDA) and similar initiatives in Latin America and the Caribbean, and Asia and the Pacific, has demonstrated that migration can yield significant benefits as regards social and economic development.

In order to share good practices and lessons learned with a wider audience, IOM, in its study *The MIDA Experience and Beyond*, assessed those initiatives extending over several regions to enable their further development. The MIDA publication is intended to provide Governments and other stakeholders with a useful tool for building a more strategic and practical approach aimed at engaging diasporas and migrants in development efforts.

The contents are as follows:

- Chapter I: Enhancing the contribution to development by diasporas and migrants: an evolving concept and its context
- Chapter II: Strategic approaches and key phases of MIDA and similar programmes
- Chapter III: Monitoring and evaluation

- Chapter IV: New orientations in the field of migration for development
- Chapter V: Integrating migration into national and regional poverty reduction and development plans
- Chapter VI: Observations and recommendations

Available from http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=1&products_id=536&zenid=4285ded5fa41b457c60a2b7b8eccea39.

Migration Policy Institute

In addition to a Global Remittances Guide, the Migration Policy Institute—an independent, non-partisan, non-profit think tank dedicated to the study of the movement of people worldwide—offers a wide range of resources focused on the link between migration and development.

Visit the Migration Policy Institute website at www.migrationpolicy.org and, specifically, at www.migrationpolicy.org/pubs/Migration_Development.php#GeneralResources.

Southern Africa Migration Group

One of the critical challenges facing Africa is how to harness the potential of internal and international migration in the interests of development. The Southern African Migration Programme (SAMP) is an international network of organizations founded in 1996 to promote awareness of migration-development linkages in the Southern African Development Community. SAMP engages in applied research on migration and development issues, provides policy advice and expertise, offers training in migration policy and management, and conducts public education campaigns on migration-related issues

www.queensu.ca/samp.2

United Nations resources on international migration

For reports of the United Nations Secretary-General and resolutions concerning international migration, visit www.un.org/esa/population/migration/index.html.

Richard Black and Jon Sward (August 2009). *Migration, Poverty Reduction Strategies and Human Development*. Human Development Research Paper 2009/38. New York: United Nations Development Programme.

This United Nations Development Programme (UNDP) publication looks at the impact of migration on human development and highlights the need for incorporation of migration into human development policies.

Available from http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_38.pdf.

United Nations. General Assembly. *International migration and development: report of the Secretary-General*. 18 May 2006. A/60/871.

United Nations. General Assembly. *International migration and development.* Resolution 63/225. 19 December 2009. A/63/49, vol. I: G.A. Official records, 63rd sess. Supplement No. 49.

Other resources

Commission of the European Communities. *Migration and development: some concrete orientations*. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Brussels, 1 September 2005. COM(2005) 390.

Patrick Taran and others (2009). *Economic migration, social cohesion and development: towards an integrated approach*. Migration Collection. Strasbourg: Council of Europe.

In the final declaration of their Eighth Council of Europe Conference, European ministers responsible for migration affairs undertook to promote and protect the human rights of migrants, with special attention to gender equality and the rights of women; to strengthen dialogue and cooperation between receiving, transit and origin countries, particularly within Europe; and to promote coherence at all levels (international, national, regional and local) between migration, development and integration policies.

The ministers also agreed to manage economic migration with a view to promoting economic and social progress in receiving, transit and origin countries; to enhance social cohesion by improving the integration of migrants and persons of immigrant background and the reintegration of migrants who return to their countries of origin; and to strengthen the contribution of migrants and persons of immigrant background to development in receiving and origin countries and their involvement in co-development programmes.

This report was prepared to support the ministerial debate during the Conference. It examines the main dimensions and characteristics of migration in the member States of the Council of Europe, analyses policy challenges posed by contemporary migration and identifies an integrated policy agenda.

Available from http://book.coe.int/EN/ficheouvragephp?PAGEID=36&lang=EN&produit_aliasid=2402.

Stephen Castles and Raul Delgado Wise, eds. (2008). *Migration and Development: Perspectives from the South.* Geneva: International Organization for Migration. Available from http://publications.iom.int/bookstore/index.hp?main_page=product_info&cPath=1&products_id= 84.

1.2 Root causes of migration

Extreme poverty, lack of opportunities for education and work, inadequate access to health care, gender discrimination, natural disasters and conflicts, as well as the environmental degradation that makes areas unlivable, are among the many reasons why people may migrate.

The United Nations Development Programme (UNDP) notes that in more than 40 countries around the world, violent conflict has torn through farmland, villages and cities. Throughout the world today, there are some 35 million survivors of conflict—10 million refugees and 25 million internally displaced persons. Conflict has destroyed homes and livelihoods in countless communities; individuals have been exposed to sexual violence and maimed, tortured and killed.

Another cause of displacement leading to migration is natural disaster. Droughts, cyclones, floods and mudslides cause unimaginable devastation. In 2008 alone, more than 300 disasters killed more than 235,000 people, affected more than 200 million others and caused losses and damage worth $181 billion. Disasters take an enormous toll not only on lives, but also on livelihoods, homes, basic social services and community infrastructure. Moreover, such destruction typically has a disproportionate impact on the poorest and most vulnerable populations, including women, children, youth and the elderly.

An examination of the problems that the Millennium Development Goals set out to address offers insight into the root causes of migration.

Goal 1: Eradicate extreme poverty and hunger

- The World Bank's latest estimates show that 1.4 billion people in developing countries were living in extreme poverty in 2005.
- Recent increases in the price of food have had a direct and adverse effect on the poor and are expected to push many more people—an estimated 100 million—into absolute poverty.
- The proportion of children under age 5 who were undernourished declined from 33 per cent in 1990 to 26 per cent in 2006. However, by 2006, the number of children in developing countries who were underweight still exceeded 140 million.

Source: Fact sheet for goal 1 (www.un.org/millenniumgoals/poverty.shtml).

Goal 2: Achieve universal primary education

- Globally, 570 million children are enrolled in school. The number of children of primary school age who were out of school fell from 103 million in 1999 to 73 million in 2006. In that year, primary school enrolment in developing countries reached 88 per cent on average, up from 83 per cent in 2000.

- In sub-Saharan Africa, the net primary school enrolment ratio has only recently reached 71 per cent, even after a significant jump in enrolment that began in 2000. About 38 million children of primary school age in that region are still out of school.
- In Southern Asia, the enrolment ratio has climbed above 90 per cent, yet more than 18 million children of primary school age are not enrolled.

Source: Fact sheet for goal 2 (www.un.org/millenniumgoals/education.shtml).

Goal 3: Promote gender equality and empower women

- Of the 113 countries that failed to achieve gender parity in primary and secondary school enrolment by the target date of 2005, only 18 are likely to achieve the goal by 2015.
- Girls account for 55 per cent of the out-of-school population.
- Since 2000, the proportion of seats for women in parliaments increased only from 13.5 to 17.9 per cent. Women occupy at least 30 per cent of parliamentary seats in 20 countries, although none of those countries are in Asia.

Source: Fact sheet for goal 3 (www.un.org/millenniumgoals/gender.shtml).

Goal 4: Reduce child mortality

- Worldwide, deaths of children under 5 years of age declined from 93 to 72 deaths per 1,000 live births between 1990 and 2006.
- A child born in a developing country is over 13 times more likely to die within the first five years of life than a child born in an industrialized country. Sub-Saharan Africa accounts for about half the deaths of children under age 5 in the developing world.
- Between 1990 and 2006, about 27 countries—the large majority in sub-Saharan Africa—made no progress in reducing childhood deaths.

Source: Fact sheet for goal 4 (www.un.org/millenniumgoals/childhealth.shtml).

Goal 5: Improve maternal health

- Estimates for 2005 show that, every minute, a woman dies of complications related to pregnancy and childbirth. This adds up to more than 500,000 women annually and 10 million over a generation. Almost all of these women—99 per cent—live and die in developing countries.
- Maternal mortality shows the greatest disparity among countries: in sub-Saharan Africa, a woman's risk of dying from treatable or preventable complications of pregnancy and childbirth over the course of her lifetime is 1 in 22, compared with 1 in 7,300 in developed regions. The risk of a woman dying from pregnancy-related causes during her lifetime is about 1 in 7 in the Niger, compared with 1 in 17,400 in Sweden.
- Every year, more than 1 million children are left motherless and vulnerable because of maternal death. Children who have lost their mothers are up to 10 times more likely to die prematurely than those who have not.

Source: Fact sheet for goal 5 (www.un.org/millenniumgoals/maternal.shtml).

Goal 6: Combat HIV/AIDS, malaria and other diseases

- Every day, nearly 7,500 people are infected with HIV and 5,500 die from AIDS. Globally, an estimated 33 million people were living with HIV/AIDS in 2007.
- The number of people living with HIV rose from an estimated 29.5 million in 2001 to 33 million in 2007. The vast majority of those living with HIV are in sub-Saharan Africa, where about 60 per cent of adults living with HIV in 2007 were women.
- Malaria kills over 1 million people annually, 80 per cent of whom are children under age 5 in sub-Saharan Africa. There continue to be between 350 million and 500 million cases of malaria worldwide each year.
- An estimated 250 million antimalarial insecticide-treated bed nets are required to reach 80 per cent coverage in sub-Saharan Africa. To date, the funds committed will provide only 100 million nets—less than one half of the requirement.

Source: Fact sheet for goal 6 (www.un.org/millenniumgoals/aids.shtml).

Goal 7: Ensure environmental sustainability

- Some 1.6 billion people have gained access to safe drinking water since 1990. At this rate, the world is expected to meet the Millennium Development Goal target on drinking water. However, about 1 billion people still do not have access to safe drinking water, and 2.5 billion lack access to basic sanitation services.
- Currently, only 22 per cent of the world's fisheries are sustainable, compared with 40 per cent in 1975. Despite their importance to the sustainability of fish stocks and coastal livelihoods, only 0.7 per cent of the area of the world's oceans—about 2 million square kilometres—were put under protection.
- Some 2.4 billion people live without access to modern cooking and heating facilities, and 1.6 billion have no access to electricity.

Source: Fact sheet for goal 7 (www.un.org/millenniumgoals/environ.shtml).

Goal 8: Develop a global partnership for development

- Official development assistance continued to drop from an all-time high of $107.1 billion in 2005 to $103.7 billion in 2007. Aid flows need to increase by $18 billion per year to meet the promise made by the Group of Eight in 2005 to double aid by 2010—an additional $50 billion annually in global aid, of which $25 billion would be for Africa.
- For the average developing country, the burden of servicing external debt fell from almost 13 per cent of export earnings in 2000 to 7 per cent in 2006, creating a more favourable environment for investment and allowing developing countries to allocate more resources to reducing poverty.
- In developed countries, 58 per cent of the population used the Internet in 2006, compared with 11 per cent in developing countries and 1 per cent in the least developed countries.

Source: Fact sheet for goal 8 (www.un.org/millenniumgoals/global.shtml).

Recommended resources

Millennium Development Goals

www.un.org/millenniumgoals/index.shtml

United Nations Development Programme

Crisis prevention and recovery

www.undp.org/cpr/we_do/conflict_prevention.shtml

Natural disaster risk management

www.undp.org/cpr/we_do/integrating_risk.shtml

1.3 Migration and gender

There are many misconceptions about the role of gender in migration; policymakers often simplify issues by "engendering" human movement, misunderstanding trafficking as an issue that primarily affects women and children and smuggling as one that primarily affects men.

Although they may face different issues with respect to the smuggling of migrants, men and women are equally vulnerable. In many cultures, men are expected to be the primary bread-winners and are therefore under pressure to leave their homes in search of employment opportunities. On the other hand, the lack of opportunities for legitimate employment for women may also act as a push factor in migration.

The following questions regarding the link between gender and migration are from Susie Jolly and Hazel Reeves, *Gender and Migration: Overview Report* (Brighton, United Kingdom: Institute of Development Studies, 2005); and "Reading on safe mobility and HIV: II" (UNDP, 2007).

For countries of origin

- Are opportunities equal for women and men? Are women (or men) restricted to less skilled, lower-paid jobs?
- What compels women to migrate? Poverty? Seeking economic betterment? Gender discrimination? violence?
- Do gender norms and policies restrict women's ability to move or pressure men to move? How do gender dynamics influence migration decisions?
- Are women empowered by migration, rendered vulnerable or both?
- Are women affected differently than men by displacement? Where provisions and/or support is provided for the displaced, who is it provided to? Is providing it to the head of the family a discriminatory practice? Can it be provided in such a way as to promote gender equality?
- What level and type of development would give more women and men the choice to stay in their country of origin?
- Are there legal opportunities to migrate for both women and men? Are people entitled to "family reunification"? What about unskilled female migrant workers?
- Do gender norms and policies restrict women's ability to move through regular channels? Does this push women into more dangerous irregular channels?
- Whom are remittances sent to? Older women rather than younger women? The men in a family rather than the women? Who benefits from the remittances?
- Do women or men send more of their income in remittances?
- Who is empowered by migrating? Are women empowered? Are transgender people empowered?

- Do those women left behind gain more independence or a greater work burden?
- What jobs are open to women in the receiving country? As migrant workers, do women bring home new skills as much as men? Are women able to gain jobs in line with their qualifications and experience?
- What skills are exiting the sending country? Are the skilled workers who are leaving primarily women or men? What impact is this having on economic development in the home country?
- What increases the risks that women and men will contract HIV as migrants or as those left behind? Are women who end up as irregular migrants more at risk?

For destination countries

- Do restrictive immigration policies make men or women vulnerable?
- How does the sex-segregated labour market in the destination country affect who benefits from migration? Does this affect the opportunities for entry, whether regular or irregular?
- Once in a destination country, are economic and social expectations realized for men and women?
- Does migration change gender relations? In a positive or negative way?
- Are women and men migrants (and those they may leave behind) at greater risk of contracting HIV?
- How does migration affect the time when women migrants return home and how prepared they are for reunification?
- Are the opportunities for women and men to enter through regular channels the same? Are women being forced into irregular channels or into being trafficked?
- Are women migrants more vulnerable to exploitation and sexual violence in isolated workplaces, for example, as domestic labourers or sex workers?
- What legal rights do women and men have, including rights to citizenship and political participation?
- Is there access to health, education and other services for migrants (irregular and regular)? Is access to services dependent on legal status?
- Does migrant domestic labour liberate host-society women with respect to pursuing careers?
- Do men and women in the host society have different attitudes to migrants? Do they feel differently about women and men migrants?

General Assembly resolution 61/208, entitled "International migration and development"

"The General Assembly:

> "7. *Calls upon* all relevant bodies, agencies, funds and programmes of the United Nations system and other relevant intergovernmental, regional and subregional organizations, within their respective mandates, to continue to address the issue of international migration and development, with a view to integrating migration issues, including a gender perspective and cultural diversity, in a more coherent way within the broader context of the implementation of internationally agreed development goals, including the Millennium Development Goals and respect for human rights;"

For the full text of the resolution, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 49* and corrigendum (A/61/49 and Corr.1), sect. IV.

Recommended resources

Marlou Schrover and others. *Illegal migration: how gender makes a difference*, Policy Brief No. 10. Amsterdam: International Migration, Integration and Social Cohesion (IMISCOE), August 2008. Available from www.imiscoe.org/publications/policybriefs/documents/PB10-Illegalmigration-gender-schrover.pdf.

This policy brief presents illegal migration specifically within the framework of a gender-based analysis. It argues that to understand a migrant's choice to migrate illegally and to remain with illegal status in the receiving country, his or her position prior to migration must be considered; that women often experience unfavourable conditions in their country of origin; and that the institutionalized perception of female illegal migrants as being at risk and male illegal migrants as posing a threat creates different circumstances for the men and women who try to migrate illegally. The brief is based on the IMISCOE publication *Illegal Migration and Gender in a Global and Historical Perspective*, Marlou Schrover and others, eds. (Amsterdam, Amsterdam University Press, 15 April 2009).

Piper, Nicola. *Gender and migration*. Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration. Singapore: Asia Research Institute, September 2005. Available from www.gcim.org/attachements/TP10.pdf.

United Nations Population Fund (2006). *State of World Population 2006: A Passage to Hope—Women and International Migration* (Sales No. E.06.III.H.1).

This report examines the scope and breadth of female migration, the impact of the funds that female migrants send home to support families and communities and their disproportionate vulnerability to trafficking, exploitation and abuse. Available from www.unfpa.org/publications/detail.cfm?ID=311.

United Nations Development Programme. *Readings on safe mobility and HIV: II*. 2007. Available from http://data.undp.org.in/hiv/IEC/Vol_2.pdf.

International Organization for Migration. *An Action Oriented Training Manual on Gender, Migration and HIV*. Geneva, 2009. Available from http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=515.

1.4 Migration and the environment

Natural disasters can have a sudden impact on migration, causing enormous population displacement. Moreover, the gradual deterioration of environmental conditions caused by climate change and man-made factors can also have a long-term impact on the movement of people. Besides phenomena such as desertification, land degradation and deforestation, there is the key issue of sea-level rise, which will have a significant impact on the movement of people. In this regard, it has been estimated that approximately 44 per cent of the world's population lives within 150 kilometres of a coastline and that a rise in sea level of only 10 centimetres, for instance, could flood most of Bangladesh and completely submerge many island States in Asia and the Pacific.

Another major issue is desertification, particularly in the Sahel region of Africa, owing partly to aridification, or decreased rainfall and extended periods of drought. The catastrophic impact of this phenomenon entails decreased food security and a threat to income.

Traditional means of livelihood are also being threatened by environmental degradation. The Inuit, for instance, are affected by an increase in mudslides resulting from the thawing of permafrost around the Arctic pole. If Himalayan glaciers continue to melt, up to 1 billion people in South Asia could face a critical shortage of freshwater.

Temperature rises can affect crops and gradual environmental change can affect small-scale farming, fishing and livestock-herding and thus all the people who depend on these forms of agriculture for their livelihood. Where ecosystems are less able to sustain human populations, communities endeavour to adapt, including by migrating temporarily, seasonally or permanently.

Recommended resources

International Organization for Migration. *Climate Change, Environmental Degradation and Migration: Addressing Vulnerabilities and Harnessing Opportunities.* Geneva, 2009.

This publication includes the report of a conference entitled "Climate change, environmental degradation and migration: addressing vulnerabilities and harnessing opportunities", which was held on 19 February 2008 in Geneva. Available from http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=503&zenid=81d3ff17068fea21c006a6744b1206e2.

International Organization for Migration. *International Dialogue on Migration, No. 10. Expert Seminar: Migration and the Environment.* Geneva, 2008.

This publication includes material from a two-day expert seminar on migration and the environment organized by IOM with the co-sponsorship of the United Nations Population Fund (UNFPA) and held in Bangkok on 22 and 23 February 2007.

It provides an account of some of the main issues discussed during the seminar, including:

(a) Definitional issues;

(b) Some critical dimensions of the migration and environment nexus, including:

(i) The impact of gradual environmental change on migration;

(ii) The impact of extreme environmental events on migration;

(iii) The effects of migration on the environment;

(iv) The association with conflict potential;

(c) Improving data and research for informed policymaking and action;

(d) Possible policy responses and interventions;

(e) The main challenges and lessons learned and their implications for the way forward.

Participants in the Expert Seminar discussed the possibility of using an all-inclusive definition of "environmental migrants". One working definition elaborated by IOM reads as follows:

> "Environmental migrants are persons or groups of persons who, for compelling reasons of sudden or progressive changes in the environment that adversely affect their lives or living conditions, are obliged to leave their habitual homes, or choose to do so, either temporarily or permanently, and who move either within their country or abroad."

Migration and climate change

The Global Migration Group offers several publications, reports and links on migration and climate change, at www.globalmigrationgroup.org/climate_change_and_migration.htm.

1.5 Migration and health

Migration is inextricably linked with health and health-care services: poor health conditions and poor services are a contributing factor to migration.

As noted in subsection 1.2 above, the health situation in some countries is dire. Some 80 per cent of the 1 million people who die from malaria annually are children under age 5 in sub-Saharan Africa. The fact that 1.4 billion people in developing countries are living in extreme poverty (according to 2005 World Bank statistics) highlights the fact that for many people, health care may not be affordable and when they live in remote areas, may not be physically accessible. Further, the health-care services that are available (where affordable and accessible) may not be adequate to meet people's health-care needs.

This state of affairs has also contributed to another phenomenon, namely, the significant movement of health-care workers to places where there are better working conditions. This movement of people with health-care capacity has had the effect of strengthening health-care systems in the countries to which they migrate but it has also meant the creation of a severe brain drain in respect of qualified health practitioners within the health-care systems that they have left, which has in turn exacerbated the health-care crisis as a driving force of migration.

Such health-care issues are never more evident than in the context of HIV/AIDS, which, as mentioned above (also in subsection 1.2), results in the loss of a huge number of lives each year. Every day, nearly 7,500 people are infected with HIV and 5,500 die from AIDS. This contributes to migration in several ways. As a root cause of migration, the threat to health and life is also a driving force for people who wish to live in an area where they will not be so vulnerable to infection with HIV and for people who, if they are already infected, wish to live in an area where they will have access to adequate health care. The stigmatization that many people living with HIV or AIDS or both endure is another influential factor motivating the desire to migrate. The fact that, in cases of death caused by AIDS, the people left behind often find themselves without a primary caregiver and family units and support systems may be destroyed can be another impetus for migration.

HIV/AIDS may definitely be considered a driving force for migration and mobility in certain parts of the world. In Southern Africa, for instance, high rates of death or disability (particularly in labour sectors such as the mining industry) create a need for new migrant workers. Loss of household income through the death or disability of a former migrant worker promotes migration, as their families must seek other means to earn an income. People with HIV/AIDS (especially those with AIDS-related infectious diseases) may have to move in order to be cared for by their families or to escape the discrimination and stigmatization that they experience within their communities. Widows or widowers (who may themselves be HIV-positive) may migrate upon the death of their partners, to seek either support from

family members or new sources of livelihood. Orphans (who may themselves be HIV-positive) commonly migrate to live with relatives or to seek income-earning opportunities.

Vulnerability of mobile populations to HIV/AIDS

People who have already begun to migrate can be particularly vulnerable to contracting HIV/AIDS, depending on the particular migrant and the circumstances of his or her migration. Generally, there are four key linkages through which migration is tied to the spread of HIV/AIDS:

- Migrants' multi-local social networks create opportunities for wider sexual networking
- Mobility and transience can encourage or make people vulnerable to high-risk sexual behaviour
- Mobility makes people more difficult to reach through interventions (preventative education, condom provision, HIV testing and counselling, post-infection treatment and care)
- Migrant communities are often socially, economically and politically marginalized, in terms both of legal rights and protection and of discrimination and xenophobia.

These linkages show that mobile populations are more likely to be exposed to infection and less likely to have access to health care and treatment and a support network when they are sick or dying.

In drawing attention to these connections between HIV/AIDS and human mobility, it is essential not to characterize migrants as bearers of disease. Attempts to "keep them out" with stricter migration controls or to ignore their HIV/AIDS intervention needs will only marginalize them further and increase clandestine flows of people, and will perhaps increase the role played by smugglers of migrants in irregular migration. For more on health considerations, see Tool 8, subsection 8.6.

In the publication *Readings on safe mobility and HIV: II* (UNDP, 2007), it is noted that mobile populations may be more vulnerable to unsafe sex practices as a result of:

- Isolation
- Discrimination and difference in languages and cultures
- Separation from regular sex partners
- Desire for intimacy, comfort and pleasure in a stressful environment
- Sense of anonymity
- Power dynamics in buying and selling sex
- Lack of access to health and social services, including information and condoms
- Lack of negotiating power in sex, including transactional sex
- Disruption and displacement caused by conflict, which may lead to changes in sexual behaviour, an increase in sexual abuse, decreased access to health services, and increase in circumstances in which sexual favours are demanded in exchange for food or something else.

Migrants are sometimes stigmatized as carriers of disease. It is important to highlight that migration does not necessarily expose persons to HIV infection: rather, HIV infection depends on the conditions in which migration takes place.

Recommended resources

Platform for International Cooperation on Undocumented Migrants. *Undocumented and seriously ill: residence permits for medical reasons in Europe*. Brussels, 2009. Available from www.medimmigrant.be/uploads/Undocumented_and_Seriously_Ill_Report_Picum.pdf.

United Nations Development Programme. *Readings on safe mobility and HIV: II*. 2007. Available from http://data.undp.org.in/hiv/IEC/Vol_2.pdf.

Global Migration Group

For more information on migration and health, visit the resource page of the Global Migration Group at www.globalmigrationgroup.org/migration_and_health.htm.

International Organization for Migration. An *Action Oriented Training Manual on Gender, Migration and HIV*. Geneva, 2009. Available from http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=515.

Joint United Nations Programme on HIV/AIDS

The Joint United Nations Programme on HIV/AIDS (UNAIDS) is an innovative joint venture of the United Nations family, uniting the efforts and resources of 10 United Nations system organizations in the response to AIDS with a view to providing worldwide assistance in preventing new HIV infections, caring for people living with HIV and mitigating the impact of the epidemic. UNAIDS helps mount and support an expanded response to AIDS—one that engages the efforts of many sectors and partners from government and civil society.

Co-sponsors of UNAIDS include the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the World Food Programme (WFP), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Office on Drugs and Crime (UNODC), the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO) and the World Bank. UNAIDS has established five focus areas to enable a more effective global response to AIDS:

- Mobilizing leadership and advocacy for effective action on the epidemic
- Providing strategic information and policies to guide efforts in the AIDS response worldwide
- Tracking, monitoring and evaluation of the epidemic, as the world's leading resource for AIDS-related epidemiological data and analysis
- Engaging civil society and developing partnerships
- Mobilizing financial, human and technical resources to support an effective response.

www.unaids.org

1.6 Migration and the global financial crisis

In many countries around the world, the current economic crisis and recession have led to an increase in unemployment, underemployment and economic instability, thereby aggravating the conditions that render people and communities vulnerable to trafficking in persons and the smuggling of migrants.

With businesses closing down, employers requesting fewer foreign workers and Governments halting the recruitment of new foreign labour, many people will take greater risks to migrate. Traffickers in persons and smugglers of migrants are likely to take advantage of increased vulnerabilities resulting from the crisis and to exploit people's willingness to take risks as they become more desperate for jobs.

In destination countries, an increased demand for cheaper goods and services is putting pressure on the protectionist environment, leading to greater vulnerability to exploitation of both regular and irregular migrants. Additional vulnerability may arise owing to increased competition with national workers for scarce jobs and diminished investments in community welfare. National workers may benefit from more support than foreign workers. Even under difficult conditions, however, the rights of smuggled migrants and of the victims of trafficking in persons must be upheld and trafficked victims appropriately identified and supported.

Evidence

There are currently no figures available to suggest that there has been a shift in respect of the criminal activities that characterize trafficking in persons and smuggling of migrants since the onset of the global economic and financial crisis. Some figures indicate that candidates for migration—be it legal or illegal—are likely to postpone their migration decisions, while those already present in a country—whether legally or illegally—may stay there waiting for the crisis to pass. Others note that no mass returns of migrant workers have been observed, but new outflows from some countries of origin have slowed down.

However, in reflecting on the root causes of trafficking in persons and smuggling of migrants, one is inclined to fear that an increase has already occurred or will occur as vulnerability increases. In addition, the impact of the crisis in terms of the decrease in public spending on activities to combat these crimes, protect the victims and uphold the rights of migrants, and the impact on investment in social services, at both the household and national levels, may be evident for many years to come.

Experience and knowledge to date of trafficking in persons have shown it to be a dynamic practice, one that manifests itself in multiple and increasing forms of exploitation. To identify and take action against such exploitation entails a global struggle. A common characteristic,

however, is the criminal ingenuity shown in bypassing systems of enforcement to mistreat human beings and taking advantage of their vulnerability to satisfy a demand and, ultimately, make a profit. Experience has shown that traffickers respond quickly in terms of change with mechanisms appropriate for maximizing profit, while the anti-trafficking community has been limited in its ability to track and respond to the changed tactics of traffickers.

Challenges, gaps and further areas of research

Coherent and comprehensive policies are needed to ensure that the rights of migrant workers are protected in any situation and, more particularly, in the situation that we are familiar with today.

Member States are encouraged to continue strengthening and prioritizing their efforts to implement comprehensive policies designed to combat trafficking in persons and smuggling of migrants while ensuring that the rights of trafficked victims and of smuggled migrants are strengthened within the context of wider development policies. Special vulnerabilities of child and women migrants need to be given due attention.

Monitoring of and research on the effects of the crisis on vulnerability would need to be carried out systematically.

Policy implications

1. Member States are encouraged to fully implement all relevant conventions dealing with trafficking in persons, smuggling of migrants, human rights, forced labour, refugees and children, and ensure they are fully utilized in cases of trafficking in persons and smuggling of migrants.

2. Member States should review their legislation with a view to implementing in practice all conventions relevant to prosecuting traffickers and smugglers, identifying victims of trafficking in persons, and protecting the rights of those victims and of smuggled migrants, while paying particular attention to vulnerable groups.

3. Member States should strengthen the skills and capacity of criminal justice agencies responsible for combating trafficking in persons and smuggling of migrants and social welfare agencies responsible for protecting the rights of those trafficked and smuggled, so as to ensure that they are equipped to proactively detect the involvement of criminals and/or organized crime and can take appropriate measures.

4. All actors engaged in combating trafficking, including criminal justice agencies and social welfare agencies, should have the capacity to identify victims of trafficking in persons and to ensure that the rights of those victims and of smuggled migrants are protected, while taking into account the special vulnerabilities of children.

5. Member States should ensure cooperation at the national, intraregional and interregional levels in combating trafficking in persons and smuggling of migrants, while ensuring that the rights of victims of trafficking and smuggled migrants are upheld.

Recommended resources

United Nations Office on Drugs and Crime. *Fact Sheet on the Impact of the Economic Crisis on Trafficking in Persons and Smuggling of Migrants*. Available from www.unodc.org/documents/human-trafficking/Impact_of_GFC_on_TIP_and_SOM.pdf.

Michael Fix and others. *Migration and the global recession*. Washington, D.C.: Migration Policy Institute, 2009.

In this report commissioned by the BBC World Service, the Migration Policy Institute explores the impacts of the financial crisis on migration flows, remittances and migrants themselves. The report asserts that:

- The recession has dampened the movement of economic migrants to major immigrant-receiving regions and, contrary to a widely held perception, immigrants are seeking to stay in their adopted country rather than return home, despite high unemployment
- Remittances have largely dropped but some regions are experiencing increased or steady remittances
- The recession has had a heavy impact on migrants, with repercussions for both sending and receiving countries.

Available from www.migrationpolicy.org/pubs/MPI-BBCreport-Sept09.pdf.

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). *The impact of the global economic crisis on illegal migration to the EU*. Warsaw, 2009. Available from www.frontex.europa.eu/gfx/frontex/files/justyna/frontex_raport.pdf.

Ibrahim Awad. *The Global Economic Crisis and Migrant Workers: Impact and Response*. Geneva: International Labour Organization, 2009. Available from www.ilo.org/public/english/protection /migrant/download/global_crisis.pdf.

International Organization for Migration. *The impact of the global financial crisis on migration*. IOM Policy Brief, January 2009. Available from www.egypt.iom.int/Doc/IOM_Policy_Brief_Financial_Crisis.pdf.

Global Migration Group and International Labour Organization. *Fact-sheet on the economic crisis, labour migration and migrant employment*. September 2009. Available from www.globalmigrationgroup.org/pdf/ILO_Fact-sheet_3_final.pdf.

Global Migration Group and International Labour Organization. *Fact-sheet on the impact of the economic crisis on immigration policies*. September 2009. Available from www.globalmigrationgroup.org/pdf/ILO_FactSheet_1_final.pdf.

Global Migration Group and International Labour Organization. *Fact-sheet on the economic crisis and migrant workers: regional differences*. September 2009. Available from www.globalmigrationgroup.org/pdf/ILO_Fact-sheet_2_final.pdf.

Global Migration Group and Economic Commission for Latin America and the Caribbean. *Fact-sheet on the economic crisis and migration in Latin America and the*

Caribbean. October 2009. Available from www.globalmigrationgroup.org/pdf/ECLAC_FactSheet_final.pdf.

Global Migration Group and Economic Commission for Asia and the Pacific. *Fact-sheet on the impact of the economic crisis on migration in Asia-Pacific*. October 2009. Available from www.globalmigrationgroup.org/pdf/ESCAP_FactSheet_final.pdf.

Global Migration Group and Economic Commission for Western Asia. *Fact-sheet on the economic crisis and international migration in the Arab region*. October 2009. Available from www.globalmigrationgroup.org/pdf/ESCWA_FactSheet_final.pdf.

Global Migration Group and Office of the United Nations High Commissioner for Human Rights. *Fact-sheet on the impact of the economic crisis on the human rights of migrants*. October 2009. Available from www.globalmigrationgroup.org/pdf/OHCHR_Fact-Sheet_final.pdf.

Global Migration Group and International Organization for Migration. *Fact-sheet on the impact of the economic crisis on return migration*. October 2009. Available from www.globalmigrationgroup.org/pdf/IOM_Fact-Sheet_1_final.pdf.

Global Migration Group and United Nations Population Fund. *Fact-sheet on the impact of the economic crisis on female migration*. September 2009. Available from www.globalmigrationgroup.org/pdf/UNFPA_Fact_Sheet_final.pdf.

Global Migration Group and United Nations Children's Fund. *Fact-sheet on the impact of the economic crisis on migration and children's rights*. October 2009. Available from www.globalmigrationgroup.org/pdf/UNICEF_Fact_Sheet_1_final.pdf.

Global Migration Group and United Nation Children's Fund. *Fact-sheet on the economic crisis and migration, remittances and children left behind*. October 2009. Available from www.globalmigrationgroup.org/pdf/UNICEF_Fact_Sheet_2_final.pdf.

Global Migration Group and United Nations Office on Drugs and Crime. *Fact-sheet on the impact of the economic crisis on trafficking in persons and smuggling of migrants*. October 2009. Available from www.globalmigrationgroup.org/pdf/UNODC_Fact-Sheet_final.pdf.

Koser, Khalid. *The global financial crisis and international migration: policy implications for Australia*. Sydney: Lowy Institute for International Policy, 2009. Available from www.lowyinstitute.org/Publication.asp?pid=1077.

1.7 The smuggling of migrants as a migration phenomenon

As more and more people seek to migrate in search of a better life for themselves and their families—sometimes fleeing lack of employment opportunities and sometimes extreme poverty, natural disaster or persecution—a demand is created for services to help them do so.

Not all persons who wish to migrate have legally sanctioned opportunities to do so. Profit-seeking criminals take advantage of this fact by smuggling migrants. One reason why the smuggling of migrants occurs is that borders exist; and generally, the numbers of those motivated to migrate far exceeds the limited possibilities for crossing borders. Meanwhile, the abilities of States to control immigration are limited and migration policies often fail to achieve their objectives.

Borders and border control measures

Research has shown that restrictive immigration laws, the tightening of asylum policies and reinforced border control measures do not necessarily result in a reduction of irregular migration. In response to improved border control measures, more irregular migrants resort to services provided by profit-seeking smugglers. This in turn fosters the "networkization" and "professionalism" of smugglers of migrants as well as an increase in the prices that they charge for their services, particularly for sophisticated operations such as "visa smuggling" which can be employed to bypass border controls. At the same time, strong law enforcement responses have contributed to the establishment of a variant form of the smuggling of migrants where smugglers offer services that, though low in cost, exact a high price in terms of the dangers they pose to the health and lives of those smuggled. This has resulted in a rise in the death toll in recent years.

Virtually every country in the world is affected by the smuggling of migrants, as a country of origin, transit or destination or even as all three.

Smuggling of migrants in the context of irregular migration

The smuggling of migrants can be considered within the wider context of irregular migration. Generally the motivations of smuggled persons are no different from those of irregular migrants: they wish to improve their lives and the lives of their family or to escape from a situation of persecution.

Relationships that smuggled migrants have with the person or people smuggling them vary significantly; in some situations, the smuggler will act simply as a facilitator by enabling the migrants to reach a destination they themselves have chosen. In other situations, the smuggler controls every aspect of the smuggling process, including the final destination. Often, migrants

in this situation will become stranded along the way and consequently unable to reach a particular destination or to return home. In other situations, the migrant and the smuggler will negotiate extensively over matters of travel and destination.

Vulnerability of migrants to smugglers of migrants

Many migrants intend to migrate independently of smugglers of migrants. However, as circumventing the restrictions on movement becomes more challenging and as environments in the course of the journey become more unfamiliar, migrants may resort to the services of smugglers of migrants. The more a migrant feels displaced (for example, not knowing the local language is a key alienating factor en route), the greater his or her need for assistance and services will be.

Recommended resources

Heckman, Friedrich. *Towards a better understanding of human smuggling*. Policy Brief No. 5. Amsterdam: European Network of Excellence on International Migration, Integration and Social Cohesion (IMISCOE), November 2007.

IMISCOE migration researchers have made efforts to better understand the phenomenon of smuggling of migrants. This policy brief reports on some key results of their research. Unique data were collected to enable the researchers to acquire greater insight into trends within smuggling and smuggling processes. The brief focuses on the key factors that influence the response to the smuggling of migrants and the dramatically increasing death toll among smuggled migrants.

Available from www.imiscoe.org/publications/policybriefs/documents/PB5-Heckman.pdf.

Khalid, Koser. *Irregular migration, state security and human security*. Paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration. University College London, September 2005. Available from www.gcim.org/attachements/TP5.pdf.

United Nations Office on Drugs and Crime. *Issue Paper: A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

www.unodc.org/unodc/en/human-trafficking/publications.html

Understanding the smuggling of migrants

1.8 What is the smuggling of migrants and related conduct?

Becoming aware of the constituent elements of smuggling of migrants and related conduct is the precondition for identifying, investigating and prosecuting such conduct.

Article 3, paragraph *(a)*, of the Protocol against the Smuggling of Migrants by Land, Sea and Air,[1] supplementing the United Nations Convention against Transnational Organized Crime[2] (hereafter referred to as the Smuggling of Migrants Protocol) defines the smuggling of migrants as "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident".

Article 6 of the Smuggling of Migrants Protocol requires the criminalization of this conduct. In addition, article 6, paragraph 1, requires States to criminalize conduct "[e]nabling a person who is not a national or a permanent resident to remain in [a] State ... without complying with the necessary requirements for legally remaining in the State by ... illegal means" "in order to obtain ... a financial or other material benefit".

To summarize, article 6 requires States to establish as an offence or as offences the following conduct:

The procurement of the illegal entry	+	of a person into a State party of which the person is not a national	+	in order to obtain, directly or indirectly, a financial or other material benefit
Enabling a person to remain in a country	+	where the person is not a legal resident or citizen without complying with requirements for legally remaining	+	in order to obtain, directly or indirectly, a financial or other material benefit

In short, the combination of the following elements constitutes smuggling of migrants and related conduct:

1. Either the procurement of the illegal entry or illegal residence of a person
2. Into or in a country of which that person is not a national or permanent resident
3. For the purpose of financial or other material benefit.

Furthermore, article 6 of the Smuggling of Migrants Protocol requires States to criminalize producing, procuring, providing or possessing fraudulent travel or identity documents when committed for the purpose of enabling smuggling of migrants.

[1] United Nations, *Treaty Series*, vol. 2241, No. 39574.
[2] Ibid., vol. 2225, No. 39574.

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world. Module 1 offers an overview of the smuggling of migrants.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Issue Paper: A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*. Sales No. E.05.V.2.

The main purpose of the Legislative Guides is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The Guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The Guides have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

1.9 What cannot be characterized as the smuggling of migrants?

It is important to underline the fact that the criminalization of smuggling of migrants and related conduct covers only those who profit from smuggling of migrants through financial or other material gain. The Smuggling of Migrants Protocol highlights the fact that such criminalization is not to cover person and entities, such as family members and non-governmental or religious groups, who facilitate the illegal entry of migrants for non-profit reasons.

Non-criminalization of smuggled migrants

A person cannot be charged with the crime of smuggling for having been smuggled. This does not mean that he or she cannot be prosecuted for having smuggled others, or for the commission of any other crime.

The Smuggling of Migrants Protocol also does not intend to criminalize migration as such. In this regard, article 5 states that the migrants themselves must not be held responsible for the crime of smuggling only because of having been smuggled:

> "Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol."

This article was included to make it explicit that no one who has been smuggled should be penalized with reference to this Protocol for the fact that they have been objects of smuggling.

It should also be noted that refugees often have to rely on smugglers to flee persecution, serious human rights violations or conflict. They should not be criminalized for making use of smugglers or for their illegal entry (article 31 of the 1951 Convention relating to the Status of Refugees).[3]

Case study

Sicilian trawler and the Office of the United Nations High Commissioner for Refugees help in the rescue of 27 Somalis

Sicilian fishing boat captain Gaspare Marrone was fishing with his crew south of Italy's Lampedusa Island when they spotted a boat in distress. The Sicilians started bringing the 30 Somali passengers on board, but in the process the boat capsized and 3 people became unaccounted for. Nicola Asaro, another Sicilian captain fishing in the area, called the UNHCR Senior Regional Public

[3] Ibid., vol. 189, No. 2545.

Information Officer, Laura Boldrini, by satellite phone and told her that Marrone and his crew were trying to mount a rescue operation but were having difficulties. Boldrini passed the information (including coordinates of Marrone's fishing boat) to the Italian coast guard and navy, who sent help. Marrone detached his boat from the tuna pen it was towing and rescued 20 men and 7 women. The migrants were taken to Porto Empedocle in Sicily after they had been moved onto a navy vessel.

Both Asaro and Marrone were presented with Per Mare awards for their efforts. The Per Mare Award was established in response to a trend whereby boat people in distress in the Mediterranean are often ignored by commercial vessels, whose crews fear facing investigations for their role in illegal migration.

Recommended resources

United Nations Office on Drugs and Crime. *Issue Paper: A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

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This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations. L*egislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2.)

The main purpose of the Legislative Guides is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The Guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The Guides have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

1.10 Related concepts: refugees and asylum-seekers

Everyone has the right to seek asylum in another country.

Article 1 of the 1951 Convention relating to the Status of Refugees, as amended by the 1967 Protocol thereto,[4] defines a refugee as:

> "A person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

A refugee cannot be repatriated, because of the principle of non-refoulement (for a further discussion, see subsection 8.11).

An asylum-seeker is a person seeking to be admitted into a country as a refugee and awaiting a decision on his or her application for refugee status under relevant international and national instruments. In case of a negative decision, he or she must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or related grounds.

Refugees and asylum-seekers sometimes use the services of smugglers of migrants. Where they have used the services of a smuggler of migrants, this shall in no way jeopardize their right to seek asylum, as is made clear by article 19, paragraph 1 of the Smuggling of Migrants Protocol, which states:

> Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

Recommended resources

Office of the United Nations High Commissioner for Refugees

The Office of the United Nations High Commissioner for Refugees (UNHCR) was established on 14 December 1950 by the United Nations General Assembly in its resolution 428 (v). The Office is mandated to lead and coordinate international action

[4] Ibid., vol. 606, No. 8791.

to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or resettle in a third country. It also has a mandate to help stateless people. UNHCR offers several resources and publications on its website.

www.unhcr.org

International Organization for Migration. *International Migration Law: Glossary on Migration.* Geneva, 2004.

The IOM Glossary on Migration was produced to serve as a guide to the terms and concepts applied in the migration field, in an effort to provide a useful tool for the furtherance of international cooperation and the common understanding of migration issues.

http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=2_8&products_id=198

Office of the United Nations High Commissioner for Refugees. "The asylum-migration nexus: refugee protection and migration perspectives from ILO." Paper presented at the second meeting of the UNHCR Global Consultations on International Protection, Geneva, 28 and 29 June 2001.

This paper is intended as a contribution to the discussion of the nexus between refugee and migration issues. It is presented from the perspective of a standards-based international organization committed to upholding protection of human rights of migrant workers and members of their families, as defined by ILO and other international norms.

www.unhcr.org/refworld/topic,4565c2251a,470a33e22,3f33797e6,0.html

Global Migration Group. *International migration and human rights: challenges and opportunities on the threshold of the 60th anniversary of the Universal Declaration of Human Rights*. New York, 2008.

This guide is the collaborative result of the 14 members of the Global Migration Group: the International Labour Organization (ILO), IOM, the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Conference on Trade and Development (UNCTAD), the Department of Economic and Social Affairs of the United Nations Secretariat, the United Nations Development Programme (UNDP), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Population Fund (UNFPA), UNHCR, the United Nations Children's Fund (UNICEF), the United Nations Institute for Training and Research (UNITAR), the United Nations Office on Drugs and Crime (UNODC), the United Nations regional commissions and the World Bank.

Chapter II describes categories of migrants and provides a regional overview of migration.

www.globalmigrationgroup.org

1.11 Related concept: trafficking in persons

Constituent elements

Article 3, paragraph *(a)*, of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (hereafter referred to as the Trafficking in Persons Protocol),[5] defines trafficking in persons as follows:

> "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

In basic terms, for a person to be guilty of trafficking in persons the following must be present (and evidenced):

- Act: the recruitment, transportation, transfer, harbouring or receipt of a person
- Means: 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
- Purpose: exploitation, which includes the exploitation of the prostitution of others and other forms of sexual exploitation, forced labour, slavery or practices similar to slavery and the removal of organs.

The Trafficking in Persons Protocol defines the crime of trafficking in persons as comprising three constituent elements, as outlined in the matrix on the next page.

The issue of consent

Article 3, paragraphs *(b)*-*(d)*, of the Trafficking in Persons Protocol states that the consent of a victim of trafficking in persons to the intended exploitation is irrelevant once it is demonstrated that deception, coercion, force or other prohibited means have been used; that consent, therefore, cannot be used as a defence to absolve a person from criminal responsibility; and that, in trafficking cases involving children, it is sufficient to prove the action and the purpose.

[5] Ibid., vol. 2237, No. 39574.

The simple fact is that no person can consent to being exploited, because in the case of adults, consent has been negated through the use of improper means, and in the case of children, their vulnerable position makes it impossible for them to provide consent in the first place.

Trafficking in persons: matrix of the elements of the offence

Recruitment		Threat or use of force		Exploitation of the prostitution of others	
Transportation		Other forms of coercion		Sexual exploitation	
Transfer		Abduction		Labour exploitation	
Harbouring		Fraud		Slavery or other slavery-like situations	
Receipt of persons	+	Deception	+	Organ removal etc.	= Trafficking in persons
		Abuse of power			
		Abuse of a position of vulnerability			
		Giving or receiving of payments or benefits to secure the consent of a person having control over another person			

Article 3, paragraphs *(b)-(d)*, of the Trafficking in Persons Protocol

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph *(a)* of this article shall be irrelevant where any of the means set forth in subparagraph *(a)* have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph *(a)* of this article;

(d) "Child" shall mean any person under eighteen years of age.

The following case studies illustrate the various circumstances in which trafficking in persons can occur:

Case study: trafficking in persons

In a European country, an investigation was conducted into trafficking of citizens from another European country for the purpose of exploiting them at tomato plantations.

Evidence showed that the traffickers placed advertisements in newspapers for workers needed to pick tomatoes. Persons providing information on working conditions and departure dates over the phone introduced themselves using false personal data. Phone numbers featured in job offers were changed frequently. The charge for the journey was about €150; workers were charged another €150 upon arrival. Transport was provided by private companies as well as by individual carriers.

Recruited workers were transported directly to plantations, where work organization and supervision were in the hands of people of the same nationality as the workers, as well as other nationalities. Workers were enslaved in the holdings, and subjected to physical and psychological violence. In order to prevent them from contacting anyone on the outside, during the working day they were surveyed by guards and at night they were locked in the premises where they slept; in many cases, their mobile phones and documents were taken away.

One of the methods used to force the people recruited to work was to charge them during the first few weeks of their stay abroad, with excessive fees for, inter alia, accommodation and electricity and for going shopping. The charges were so high and the earnings so low that the victims did not manage to cover the alleged debt, even after a few months. The work was organized in such a way as to make it impossible for them to meet the requirement of picking a certain number of tomatoes within a certain time, resulting in a fine charged by the exploiter; thus, the indebtedness of the victim kept increasing. The victims were accommodated in premises completely unfit for humans, mainly ruined buildings with no water, electricity or furnishings; in many cases, victims were forced to live in tents. The "guards" carried guns and were extremely brutal.

Recommended resources

There are several tools and publications addressing the issue of trafficking in persons.

United Nations Office on Drugs and Crime Anti-Human Trafficking and Migrant Smuggling Unit

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations Office on Drugs and Crime. *Anti-human trafficking manual for criminal justice practitioners*. New York, 2009.

This Training Manual was developed in line with the Trafficking in Persons Protocol supplementing the United Nations Convention against Transnational Organized Crime. While the purpose of the Manual is to support prevention of trafficking in persons, the lessons learned presented therein are applicable to the issue of smuggling of migrants.

For more information about the Training Manual, visit www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html

United Nations. *Toolkit to Combat Trafficking in Persons* (Sales No. E.08.V.14).

In pursuit of the goals of preventing and combating trafficking in persons, protecting and assisting its victims and promoting international cooperation to these ends, the UNODC *Toolkit to Combat Trafficking in Persons* seeks to facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society who are working at different levels towards these same objectives. Specifically, the Toolkit is intended to provide guidance, showcase promising practice and recommend resources in thematic areas from around the world.

PDF version:

www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuside

Online version:

www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html

United Nations. *Combating Trafficking in Persons: A Handbook for Parliamentarians* (Sales No. E.09.V.5).

The Inter-Parliamentary Union (IPU) and UNODC, in the framework of the Global Initiative to Fight Human Trafficking (UN.GIFT), launched the publication *Combating Trafficking in Persons: A Handbook for Parliamentarians*. As public awareness of trafficking in persons grows, people are demanding that action be taken to end it. Parliamentarians—as elected representatives—have the responsibility and power to ensure that laws and other measures are put in place and implemented to that end. The *Handbook* is intended to inspire them to enact sound laws and adopt good practices that will strengthen national responses to trafficking in persons.

www.unodc.org/documents/human-trafficking/UN_Handbook_engl_core_low.pdf

United Nations. *International Framework for Action to Implement the Trafficking in Persons Protocol*. New York, 2009.

The International Framework for Action is a technical assistance tool that supports United Nations Member States in the effective implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The International Framework for Action consists of a narrative part and a set of tables. The narrative describes key challenges that may arise in the implementation of the Trafficking in Persons Protocol and proposes general measures that can be taken in order to address these challenges more effectively. The set of tables details these measures further, within the context of five pillars encompassing practical actions designed to support the implementation of the Trafficking in Persons Protocol.

www.unodc.org/documents/human-trafficking/Framework_for_Action_TIP.pdf

United Nations. *Model Law against Trafficking in Persons* (Sales No. E.09.V.11).

The *Model Law against Trafficking in Persons* has been developed to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law covers not only the criminalization of trafficking in persons and related offences, but also the different aspects of assistance to victims and the establishment of cooperation between different State authorities and non-governmental organizations. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples.

www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf

The effectiveness of legal frameworks and anti-trafficking legislation.

Background paper prepared for the Vienna Forum to Fight Human Trafficking, Vienna, 13-15 February 2008. Available from www.unodc.org/documents/human-trafficking/Marika-Misc/BP023TheEffectivenessofLegalFrameworks.pdf.

This paper provides an overview of domestic implementation of the Trafficking in Persons Protocol and raises some key discussion issues.

Global Initiative to Fight Human Trafficking

The Global Initiative to Fight Human Trafficking (UN.GIFT) was conceived to promote the global fight against trafficking in persons, on the basis of international agreements reached at the United Nations. UN.GIFT was launched in March 2007 by UNODC with a grant made on behalf of the United Arab Emirates. It is managed in cooperation with the International Labour Organization (ILO), the International Organization for Migration (IOM), the United Nations Children's Fund (UNICEF), the Office of the United Nations High Commissioner for Human Rights (OHCHR), and the Organization for Security and Cooperation in Europe (OSCE). UN.GIFT works with all stakeholders—Governments, business, academia, civil society and the media—as they support each other's work, create new partnerships and develop effective tools with which to fight trafficking in persons.

www.ungift.org

1.12 Distinguishing between the smuggling of migrants and trafficking in persons

It is important to distinguish between trafficking in persons and smuggling of migrants for three reasons:

- The constituent elements of these offences are different
- The response required and the assistance needed will vary, depending on the offence
- Whether one is recognized as a smuggled migrant or as a victim of trafficking will have serious implications for the person concerned.

What are the main differences between trafficking in persons and smuggling of migrants?

In a significant number of cases it may be difficult to distinguish between a case of trafficking in persons and a case of smuggling of migrants. The distinctions between smuggling and trafficking are often very subtle and they sometimes overlap. Identifying whether a case is one of trafficking in persons or smuggling of migrants can be very difficult for a number of reasons:

- Some trafficked persons might start their journey by agreeing to be smuggled into a country illegally, but later in the process, may find themselves deceived, coerced or forced into an exploitative situation (for instance, one where they are compelled to work for extraordinarily low wages to pay for the transportation).
- Traffickers may present an "opportunity" that sounds more like smuggling to potential victims. They could be asked to pay a fee in common with other people who are smuggled. However, the intention of the trafficker from the outset is the exploitation of the victim. Charging the "fee" is part of the deception and a fraudulent way to make a little more money.
- Smuggling may not be the planned intention at the outset but a "too good to miss" opportunity to traffic people presents itself to the smugglers/traffickers at some point in the process.
- Criminals may both smuggle and traffic people, employing the same routes and methods of transporting them.

In short, what begins as a situation of smuggling of migrants may develop into one of trafficking in persons.

There are three basic differences between smuggling of migrants and trafficking in persons, as summarized below:

1. Exploitation

One important indicator of whether a case is one of smuggling of migrants is the means by which the offenders generate their income. The primary source of profit and thus also the primary purpose of trafficking in persons is exploitation. In contrast, the smuggler has no intention of exploiting the smuggled migrant after having enabled him or her to illegally enter or stay in a country. Smugglers of migrants are usually paid in advance or upon the arrival of the smuggled migrant, by the smuggled migrant or by intermediaries. It must also be noted that smuggled migrants sometimes do not pay the entire smuggling fee at the outset of the process; the fact that payment is pending renders them vulnerable to exploitation by the smugglers. In other words, the relationship between smuggler and smuggled migrant usually ends after illegal entry or illegal residence has been achieved. In contrast, in the process of trafficking in persons, profits are generated mainly through exploitation. The exploitation phase might last for several years.

Exploitation could even include "selling" a victim at some point before they begin to be exploited at their final destination; however, they are being "bought" to be exploited.

2. Illegal entry or illegal residence ("transnationality")

Smuggling of migrants always has a transnational dimension involving at least two countries. The objective of the smuggling of migrants or related conduct is always to facilitate the illegal entry of a person from one country into another country or their stay in that country. Trafficking in persons, on the other hand, may occur across borders but it may also be carried out within a single country, in which case a person is simply taken to another location for the purpose of exploitation. Indeed, victims of trafficking are often trafficked within their home country.

3. Consent

Smuggling of migrants does not necessarily involve the victimization of the smuggled migrant. Smuggling of migrants generally involves the consent of those being smuggled. However, often other crimes are committed against smuggled migrants during the smuggling process, such as violence or crimes entailing endangerment of the smuggled migrants' lives. Smuggled migrants might withdraw their consent during a smuggling operation (for instance, if they deem the conditions of transportation too dangerous) but may subsequently be forced to continue to participate in the smuggling process (for instance, by being forced to enter a leaking boat or a crowded truck).

In contrast with the smuggling of migrants, trafficking in persons is always a crime against a person. Either victims of trafficking never give their consent—for instance, if they have been abducted or sold—or, if they have given their consent initially, that initial consent became meaningless, by virtue of the fact that the traffickers have used deception or violence to gain control over their victims.

The following case study illustrates a case of trafficking in persons that from the victim's perspective started as migration.

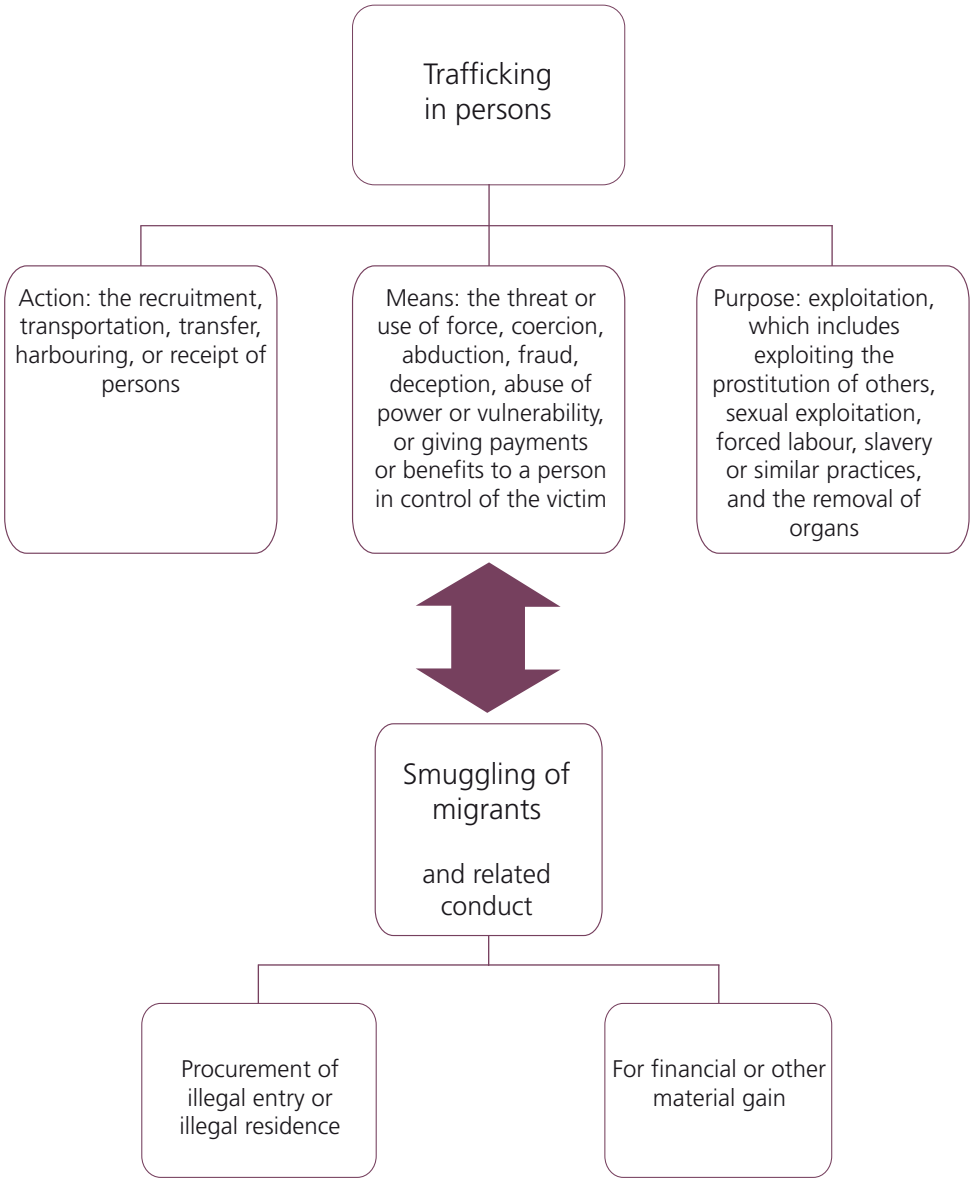
Case study: "Nok"

Nok is a 20-year-old woman from South-East Asia. She is widowed and supports her two small children by selling vegetables. One day, her friend Pat approaches her. Pat says she can find Nok a job as a domestic worker in a neighbouring country, where she can make 10 times her current monthly earnings. Pat also promises to make all her travel arrangements and to pay for her trip if Nok agrees to repay her once she starts her new job.

Deciding that the extra income will benefit her family, Nok leaves her children in the care of her mother and begins her journey by bus in the company of Pat. Nok has no passport, but Pat assures her that she will not need one since she has friends at the border. Some miles before the border, they leave the bus and wait at a roadside cafe until they are joined by a truck driver named Tim. Nok is surprised to see Pat pay Tim a significant sum of money before they both get into the truck with him and continue their journey to the border. They cross the border without any problems, just as Pat promised. It is the only time Nok knowingly crosses a border on her journey. Tim is friendly, but asks that Nok travel in the truck's closed rear compartment so as to avoid problems at the next border. It is dark, hot and very uncomfortable in the back of the truck, but Nok agrees, since she has no passport and can rely only on his advice and trust in her friendship with Pat. It is a long trip, and Nok's journey in the rear compartment of the truck comes to an end in an empty field beside a wide river where Pat and the driver Tim meet four men.

The four men then take Nok across the river. Nok is told that she is now in the country she was destined for. She is ordered to get in the back of a truck that is waiting at the side of the river. In the back of the truck are seven other women. Nok is afraid, no longer believing that she is to be given the job she was promised, and when she refuses to get into the vehicle one of the men threatens her with a gun. The four men travel together in the cab of the vehicle. Nok and the other women are taken to a private house in an urban area of a major city. Over a period of several weeks, the four men repeatedly abuse the women physically and sexually. They do not allow them to leave the premises. One man tells Nok that if she escapes, the police will put her in prison for being in the country without a passport and she will never see her children again. He also threatens to track down and traffic her children if she even tries to escape. Other men visit the house, and Nok is forced to have sex with them, for which her four captors receive payment. She is not allowed to retain any of the money or leave the building.

Trafficking in persons and smuggling of migrants (as criminalized by international law)



Recommended resources

United Nations. *Toolkit to Combat Trafficking in Persons* (Sales No. E.08.V.14).

This Toolkit provides guidance, showcases promising practice and recommends resources in thematic areas from around the world. Tool 1.2 of this resource explores the difference between trafficking in persons and the smuggling of migrants.

www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_1-2.pdf

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world. Module 1 examines the differences between smuggling of migrants and trafficking in persons.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Anti-human trafficking manual for criminal justice practitioners*. New York, 2009.

This Training Manual was developed in line with the Trafficking in Persons Protocol supplementing the United Nations Convention against Transnational Organized Crime. While the purpose of the Manual is to support prevention of trafficking in persons, the lessons learned set out therein are applicable to smuggling of migrants. Chapter 1 of this training manual examines the various definitions of trafficking in persons and smuggling of migrants.

For more information about the Training Manual, visit www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html.

United Nations. *Model Law against Trafficking in Persons* (Sales No. E.09.V.11).

The UNODC *Model Law against Trafficking in Persons* has been developed to assist States in implementing the provisions contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law covers not only the criminalization of trafficking in persons and related offences, but also the different aspects of assistance to victims and the establishment of cooperation between different State authorities and non-governmental organizations. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples.

www.unodc.org/documents/human-trafficking/Model_Law_against_TIP.pdf

1.13 The impact of smuggling on smuggled migrants

During the journey from their countries of origin, migrants can be subject to inhumane conditions. Migrants are often treated as commodities and forced to hide in containers meant for goods as they travel across borders. Smugglers are more concerned with avoiding their own detection than they are with the safety of the people they are smuggling, often leaving for dead those who are too weak or infirm to travel. Migrants travelling by sea are often exposed to extremely dangerous conditions in vessels that are not seaworthy and on which there is no access to adequate food, water and sanitary conditions. Every year, thousands of people die trying to achieve a better life because of hazardous travel conditions and the ruthlessness of the people whose help they sought to reach their goal.

Many migrants spend several weeks, months or even years migrating. They may end up stranded at one or several points along the way. Families' expectations in origin countries, pressure of smugglers who need to be paid and debts that are incurred en route all combine to make the option of returning home an unlikely one. Some migrants, however, have the psychological determination to overcome all obstacles in order to reach a place where they have greater opportunities for a better life.

Often in the places where migrants become stranded, they will be absorbed into a community of other clandestine migrants, governed by its own rules and social codes. Often such communities are organized on the basis of hierarchic power structures.

Case study: crossing the Gulf of Aden

In its June 2008 report entitled "No choice: Somali and Ethiopian refugees, asylum-seekers and migrants crossing the Gulf of Aden", Médicins Sans Frontières reported on the extreme hardship endured by people.

Every year, thousands of people flee from conflict, violence, drought and poverty in Somalia and other stricken countries in the Horn of Africa, across the Gulf of Aden, in search of relative safety in Yemen. Some 30,000 people undertook this journey in 2007 and another 20,000 made it through alive in the first five months of 2008. Many of the refugees and migrants attempting this journey used the services of smugglers of migrants to cross the treacherous Gulf of Aden. The smugglers operating this route are notorious for their brutality and fatality rates are very high.

In September 2007, Médicins Sans Frontières organized a project on the southern shores of Yemen whose objective was to provide medical, psychological and humanitarian assistance to new arrivals. Six thousand refugees and migrants were assisted by Médicins Sans Frontières between September 2007 and April 2008.

The testimonies collected by Médicins Sans Frontières revealed harrowing ordeals. Patients told of death; of more than 100 people crammed into boats designed to carry 30 or 40, many in

windowless storage places in the hold; and of people forced to sit in the same position without moving and deprived of food and water. Many patients suffered pains from sitting in the same position for several hours; some patients reported pain in their buttocks and genitals from sitting in seawater and urine-soaked clothes; and some men had experienced loss of skin from their scrotum. Others experienced trouble breathing because other people had been sitting on them. Conditions in the hold (designed for fish) were worse: people felt as though they were suffocating; others had to sit in seawater, urine, faeces or vomit. When some people asked to come back up on deck, the smugglers would charge them more money for being allowed to do so, or charge them more money only to push them back down, or simply beat them for asking in the first place.

Beatings (of men, women and children) with implements such as sticks, pipes, belt buckles and, sometimes, even rifle butts and knives were reported in 9 out of 10 boats.

Médicins Sans Frontières reported on the medical and humanitarian consequences of the journey across the Gulf of Aden, including the abuses by smugglers. Patients were treated for:

- Injuries resulting from severe beatings
- Dehydration
- Respiratory problems
- Trauma:
  - Many patients presented general body pains and headaches: physical manifestations of the psychological consequences of the journey
  - Loss of loved ones during the journey
  - For a further discussion of trauma, see Tool 8, subsection 8.3.
- Sexually transmitted infections:
  - Médicins Sans Frontières stated that the increased incidence of sexually transmitted infections could be an indicator of sexual and gender-based violence
  - Smuggled migrants may be particularly vulnerable to HIV infection.

Recommended resources

Médicins Sans Frontières. *No choice: Somali and Ethiopian refugees, asylum-seekers and migrants crossing the Gulf of Aden*, June 2008. Available from http://doctorswithoutborders.org/publications/article.cfm?id=2821&cat=special-report.

INTERPOL. *People smuggling*. Fact sheet available from www.interpol.int/Public/ICPO/FactSheets/THB01.pdf.

Fortress Europe

http://fortresseurope.blogspot.com

This blogspot documents the hardships experienced by and deaths among migrants attempting to migrate.

1.14 The smuggling of migrants as a deadly criminal business

The smuggling of migrants as a business

In cases where a smuggler of migrants conducts his or her business for financial or material profit, the illegal activity can be considered one kind of business model, which involves a demand for a service and the provision of that service to a client in exchange for financial remuneration. The market is often a highly complex one with different services available; certain services or stages of the process may be outsourced to middlemen along the way. As in other businesses, word of mouth can carry a long way, with a reputation for trustworthiness ensuring the long-term success of any given smuggling of migrants operation and its competitive edge.

The business aspects of smuggling of migrants include the following:

- Responsibilities for certain tasks or stages of the migration process are outsourced. The welfare of the persons being smuggled may be irrelevant to the people involved in smuggling them.
- Contrasted with the point above, because smuggling is a smuggler's livelihood, it may be in his or her interest to offer reliable services, so that word spreads among potential "clients"; or, if he or she is contracted to perform a part of the smuggling process, it may be in his or her interest to perform well, so that he or she will be reconsidered by the coordinator for the next operation.
- Coordinators and mediators are often paid for their work by commission.
- Smugglers often compete with each other just as businesses compete: coordinators will generally choose the "cheaper" or "better" offer or leave competitors to come to pragmatic agreements among themselves. (The emergence of new competition during conflict has led to agreements that, for instance, one group will smuggle on Mondays and Wednesdays and another on Tuesdays and Thursdays.)

Deaths resulting from smuggling operations

Smugglers of migrants often conduct their illegal activities with little or no regard for the lives of the people whose hardship has created a demand for smuggling services.

It is difficult to quantify precisely irregular migration flows around the world, given that irregular migrant populations are often hidden and that smuggling activities take place very much underground. UNODC estimates that each year as many as 300,000 African migrants try to reach Europe without appropriate documentation. The BBC reported that in 2006 alone about 6,000 migrants from Africa died or went missing on the sea journey to the Canary Islands.

The following extracts from news reports give an indication of the alarming number of deaths that result from smuggling of migrants.

Extract One

Fifty-four people have been found dead after suffocating in a lorry smuggling them. More than 100 people were packed into a container measuring 6 m by 2 m; many of the survivors are seriously ill from dehydration and lack of oxygen. The driver opened the doors of the vehicle after the migrants banged on the walls—but he fled on foot when he saw what had happened. The [survivors] said they tried to bang on the walls of the container to tell the driver they were dying, but he told them to shut up as police would hear them when they crossed through checkpoints. A 30-year-old survivor told how he believed everyone would perish in the lorry: "I thought everyone was going to die. I thought I was going to die. If the truck had driven for 30 minutes more, I would have died for sure."

Source: BBC.

Extract Two

She was wearing jeans and a blouse. Foam around her mouth was evidence of a seizure. Though she had only walked about a day and a half, her physical condition and the insufficient water and food she had consumed made her susceptible to a desert death. In her last call home a couple of days before she died, she said "Daddy, I've reached the border."

Source: The New York Times.

Extract Three

"Sixteen people have drowned over the weekend in incidents involving smuggling boats … the passengers onboard said that the vessel, reportedly carrying 44 people, capsized early Saturday night when the smugglers began to push the passengers overboard into the waters off the coast … As smugglers began forcing people into the sea, frightened passengers moved towards one side of the vessel, causing it to capsize."

Source: UNHCR.

Extract Four

"5,100 crosses at the border mark migrant deaths … The crosses represent the number of migrants estimated to have died in the [last] 15 years."

Source: CBS news.

Extract Five

"Dozens of bodies washed ashore today … after smugglers threw nearly 150 migrants overboard into shark-infested waters."

Source: The Star.

Extract Six

"Customs officers found the bodies of 58 migrants, who had suffocated during the five-hour crossing, in the back of a truck … Only 2 of the people who made the trip survived."

Source: Associated Press.

Recommended resources

United Nations Office on Drugs and Crime. *Issue Paper: A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

Fortress Europe

Fortress Europe is a blog that reports on deaths of migrants attempting to reach Europe.

http://fortresseurope.blogspot.com

No_border network

The No_border network compiles media reports of deaths of migrants trying to reach Europe.

www.noborder.org

European network against nationalism, racism, fascism and in support of migrants and refugees

The European network against nationalism, racism, fascism and in support of migrants and refugees (UNITED) has drawn up a list of those who have lost their lives trying to reach Europe. The organization attributes the large number of deaths to border militarization, asylum laws, detention policies, deportations and carrier sanctions, while stressing that these are not singular incidents, but symptoms of policies that no longer consider the humanity of those fleeing their homeland. Finalized in May 2009, the list is available at www.unitedagainstracism.org/pdfs/listofdeaths.pdf.

Karl Eschbach, Jacqueline Hagan and Nestor Rodríguez. *Deaths during undocumented migration: trends and policy implications in the new era of homeland security*.

Defense of the Alien, vol. 26 (2003), pp. 37-52.

Center for Immigration Research, University of Houston

The Center for Immigration Research at the University of Houston has been conducting an ongoing study of deaths of undocumented migrants along the south-west border of the United States of America since 1995 through fieldwork and quantitative research (Eschbach and others, 1999; Eschbach, Hagan and Rodríguez, 2001).

The fieldwork has involved interviews with border patrol agents, medical examiners, funeral directors, local law enforcement agents, undocumented migrants and human rights advocates. Through these interviews, those involved sought to understand both the number of and reasons for migrant deaths in each area along the border. The quantitative component involves the systematic study of trends in undocumented deaths along the full border using a standardized data source.

www.class.uh.edu/cir/

Human Rights Watch. *Sinai Perils: Risks to Migrants, Refugees and Asylum Seekers in Egypt and Israel*. New York, 2008.

Since 2006, over 13,000 refugees, asylum-seekers and other migrants have passed through Egypt and crossed the Sinai border into Israel. The majority arrived in Israel beginning in 2007; at times, in early 2008, over 100 people per night reportedly crossed the border.

Available from www.hrw.org/en/reports/2008/11/12/sinai-perils-0.

United States Commission on Civil Rights. *Tragedy along the Arizona-Mexico border: undocumented immigrants face the desert.* Briefing before the Arizona Advisory Committee to the United States Commission on Civil Rights, Tucson, Arizona, 23 August 2002. Available from www.law.umaryland.edu/marshall/usccr/documents/cr182t67b.pdf

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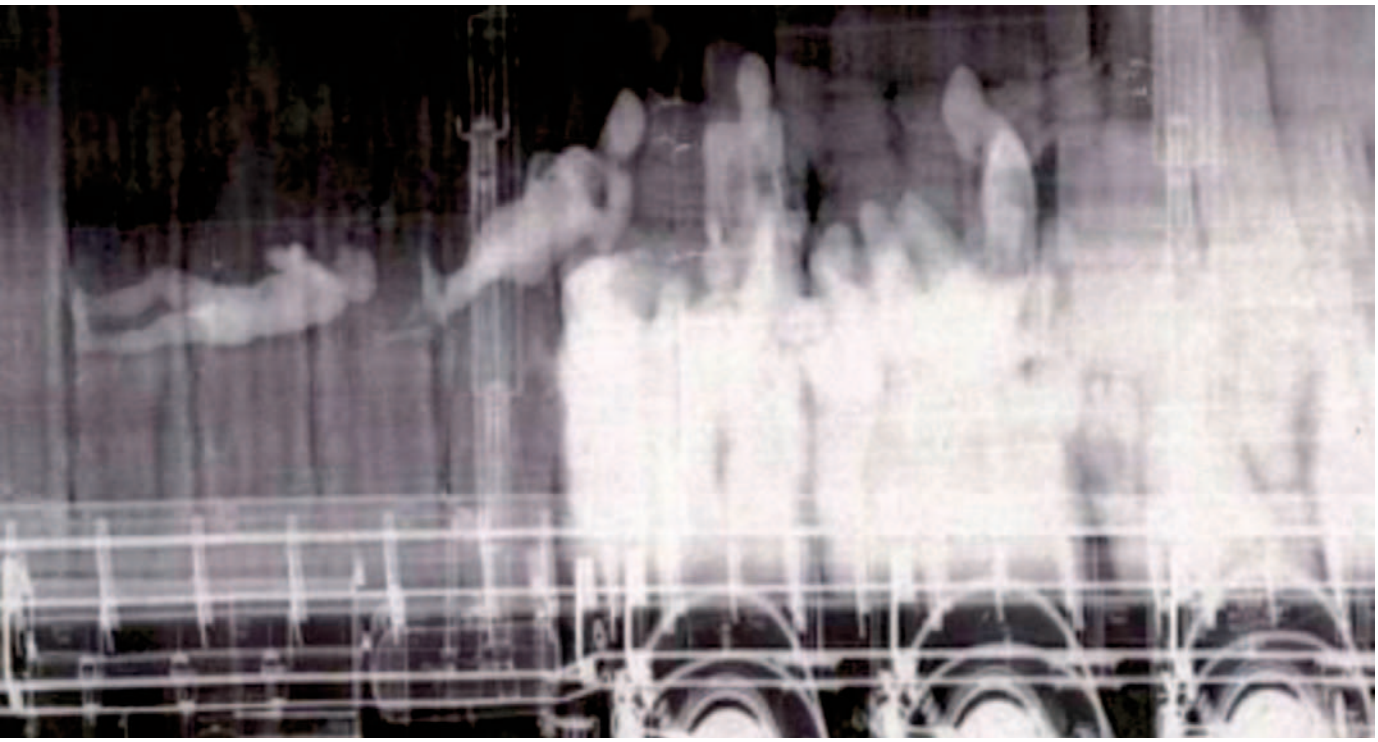

Toolkit to Combat Smuggling of Migrants

Tool 2
Actors and processes in the smuggling of migrants

2

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UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Toolkit to Combat Smuggling of Migrants

Tool 2

Actors and processes in the smuggling of migrants

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Contents

Overview 1

2.1 Overview of actors and their role in the smuggling of migrants 3

2.2 Profiles of smuggled migrants 7

2.3 Forms of smuggling of migrants 11

2.4 The role of document abuse 18

2.5 The role of corruption in the smuggling of migrants 22

2.6 Key financial transactions in the smuggling of migrants 28

2.7 Smuggling of migrants by land 32

2.8 Smuggling of migrants by sea 34

2.9 Smuggling of migrants by air 37

Overview

Tool 2, entitled "Actors and processes in the smuggling of migrants", is divided into nine sections as follows:

2.1 provides an overview of actors in the smuggling of migrants and their role;

2.2 considers the various profiles of smuggled migrants;

2.3 examines the various forms of smuggling of migrants;

2.4 examines the role of document abuse in the smuggling of migrants;

2.5 highlights the key role of corruption in the smuggling of migrants;

2.6 draws attention to some of the key financial transactions involved in the smuggling process;

2.7, 2.8 and 2.9 describe the processes of smuggling migrants by land, sea and air.

2.1 Overview of actors and their role in the smuggling of migrants

The process of smuggling migrants can involve a number of actors in a range of roles. Small-scale smugglers generally arrange all aspects of the smuggling operation themselves rather than employing other actors in the process. Within larger smuggling networks, there is a clear division of work among the actors involved.

Individuals who head smuggling networks are often the actors most difficult to identify and bring to justice. Unless their activities are stopped, the smuggling of migrants will continue.

Some of the roles played by actors involved in the smuggling of migrants are outlined below.

Coordinators/organizers

Role

The coordinator or organizer is the person who has overall responsibility for the smuggling operation, much like the manager of a company. He or she might direct, employ or subcontract other individuals participating in the operation. The coordinator/organizer oversees the whole process and can assign smugglers to an operation or to a specific part of an operation, select the route and mode or modes of transport to be used and arrange accommodation. The coordinator/organizer has many contacts.

Relationships

A full smuggling operation might be organized by one coordinator/organizer or by several acting in collaboration to made the necessary arrangements.

It is usually difficult to gather sufficient evidence against coordinators/organizers. They often have "employees" who have a more practical role in the operation and who report to the coordinator/organizer as necessary.

Recruiters

Role

Recruiters advertise their "services" and establish contact between smugglers and prospective migrants seeking ways to migrate. Recruiters often lure such persons into illegal migration by deliberately misinforming them about both the migration process and conditions in the destination country. They prey on vulnerable persons and exploit their vulnerability. Recruiters may collect initial fees charged to the smuggled migrants for transportation and may also use the services of persons who do not directly recruit persons to be smuggled but who provide information as to where such persons can be found.

Relationships

Recruiters often collaborate with more than one smuggler. In many cases, they are resident in the country of origin or transit, have a good knowledge of the migrants' language and may even know the migrants personally.

Transporters/guides

Role

Transporters or guides carry out the practical part of the smuggling operation by guiding and accompanying migrants en route through one or more countries and across borders. The smuggled migrants may be handed over to another transporter/guide at different stages of the journey. In many cases, transporters/guides are men from border regions who have good local knowledge. When intercepted while smuggling a group of migrants, they often attempt to pass themselves off as one of the migrants.

Since transporters/guides are usually easy to recruit, their loss from the network does not necessarily affect the smuggling operation in any serious way. However, they play a crucial role in determining whether or not the migrants are successful in crossing borders, and are in a position to mistreat or exploit those they are smuggling. It is often the role of the transporter/guide that has the greatest impact on the reputation of the smuggling network as a whole.

Relationships

Transporters/guides are not always part of a broader smuggling network; some provide services on an ad hoc basis or seek out prospective clients in border areas (including at bus stations or bridges at borders).

Spotters, drivers, messengers and enforcers

Role

Spotters, drivers and messengers perform ad hoc jobs that are part of the smuggling process. Spotters, for instance, are responsible for providing specific information about checks by police, border guards or army personnel. Spotters often travel ahead of the vehicle carrying the smuggled migrants and communicate with it by mobile phone to warn of possible checks.

Enforcers are responsible for safeguarding the operation, to which end they may use threats or violence against the smuggled migrants in order to keep them from making noise or moving too much during the journey.

Service providers and suppliers

Role

Ad hoc service providers and suppliers often have an established link with the smugglers and are paid a share of the proceeds from the smuggling operation in return for their role. In many cases they collaborate with more than one smuggling network or group in order to maximize the frequency with which their services are used and thus their earnings from the smuggling business. For instance, owners or builders of boats may be complicit in the use of their boats in smuggling migrants.

Corrupt public officials, including corrupt border police, soldiers, immigration officials, employees in embassies and consulates and police at ports, may be bribed to turn a blind eye or otherwise facilitate the smuggling process.

Migrant smugglers and smuggled migrants may be harboured by hotel, house or apartment owners (or residents). Hotel owners can be particularly useful collaborators when smugglers require accommodation for a larger group of migrants.

Other individuals who may play a role in facilitating the smuggling process in exchange for payment include:

- Forgers of passports, visas and other travel and immigration documents
- Train conductors
- Taxi drivers
- Travel agents
- Airline staff
- Owners of boats or other vehicles
- Persons responsible for maintenance of vehicles and fuel supply
- Financiers/cashiers responsible for transferring the money collected from the smuggled migrants to the smuggler(s) on successful completion of the smuggling operation. Financiers/cashiers may be the owners or employees of legitimate businesses (e.g. shop owners).

It should also be noted that some individuals facilitate the smuggling process unknowingly (such as taxi drivers), while others may be aware that they are playing a passive role in the smuggling process but turn a blind eye (for instance, a taxi driver may be aware that he is transporting a smuggled migrant to a safe house but may think that it is not his or her business to interfere).

Recommended resources

Chin, Ko-Lin (2001). The social organisation of Chinese human smuggling. I*n Global Human Smuggling: Comparative Perspectives*, Rey Koslowski and David Kyle, eds. Baltimore: John Hopkins University Press.

Chin, Ko-Lin, and Sheldon Zhang. *Characteristics of Chinese human smugglers*. NIJ Research in Brief, August 2004. Washington, D.C.: United States Department of Justice, Office of Justice Programs. Available from www.ncjrs.gov/pdffiles1/nij/204989.pdf.

Nilufer Narli, Ayse. Human Trafficking and Smuggling: the Process, the Actors and the Victim Profile. In *Trafficking in Persons in South East Europe - a Threat to Human Security*. Vienna: National Defence Academy and Bureau for Security Policy, 2006.

Van Liempt, Ilse (2007). *Inside Perspectives on the Process of Human Smuggling*. Policy Brief No. 3. Amsterdam: International Migration, Integration and Social Cohesion (IMISCOE). Available from www.imiscoe.org/publications/policybriefs/documents/PB3-Liempt.pdf.

This policy brief is intended for policymakers who deal with irregular migration and asylum. It draws attention to alternative perspectives on the smuggling of migrants, social perceptions of such smuggling, the need to give greater attention to the diversity of smuggling processes and the complexity of the circumstances that give rise to the smuggling of migrants.

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and migrant smugglers in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving law enforcement and prosecution experts from several regions of the world.

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United Nations Office on Drugs and Crime. Issue Paper: *A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

www.unodc.org/unodc/en/human-trafficking/publications.html

2.2 Profiles of smuggled migrants

It is difficult to draw up generalized profiles of smuggled migrants, since the information currently available is too scattered and too incomplete and global trends in migration are constantly changing.

While smuggled migrants may be men, women or children, many studies carried out in different parts of the world have shown that the majority of such migrants are young men, a trend which is attributable in part to the expectations placed on men in many societies to provide for their families. However, available literature on migration indicates that the number of female migrants is increasing. Much of that literature focuses on poverty as the key factor driving that trend; however, educated female migrants who are not from impoverished backgrounds account for an ever-increasing proportion of illegal migrants.

Many smuggled migrants seek to escape poverty, natural disaster, conflict or lack of opportunities, inter alia, for employment or well-paid employment. Others seek asylum. While many are poor and uneducated, some are educated members of the middle class. In many cases, it is a lack of possibilities to migrate legally that leads some migrants to seek the services of smugglers.

Some research has indicated that the ethnicity of smuggled migrants plays a role in determining who smuggles them, the way in which they are treated by the smugglers and organize themselves en route and sometimes the destination they aim for.

The choice between land, sea or air routes depends largely on the funds available to the smuggled migrant for the journey. Some smuggled migrants use a combination of routes to complete their journey.

Case study: Morgan

"My name is Morgan, I'm 30 years old. I tried to get to the Canary Islands once before but didn't make it; I'm on my way back to try a second time. The boat I was on was intercepted by the Spanish police as we reached land. I was put in detention and then deported back to Nigeria. That journey was quite possibly the most frightening experience of my life and had we not been picked up by the authorities, we would all have died. Despite this, I am on my way back to try again a second time.

"Life in Nigeria is hard. There is such poverty. There are no jobs, there's no food and there is corruption. I can't say too much about the situation as I fear for the lives of my family; the ones I've left behind. My father died when I was young, life for my family has been difficult ever since, I don't remember a time when we didn't struggle to eat. I have to try to make a better life for myself and it will enable me to send money back for my family.

"I left Benin City in Nigeria on 11 January 1998 and began my journey. I travelled overland through Nigeria, Niger, Libya, Algeria and into Morocco. I worked wherever I could, selling goods and working as a barber. I was caught by police on various occasions. A friend of mine told me we should go to the western side of Morocco, where we could meet someone who would help us to get to the Canary Islands. I gave a man 300 euros. He took me out into the open desert, where there were more than 70 other Africans waiting to go. We entered the boat on 7 August 2002. There were three boats, each boat carried around 25 people. As the boat moved off, we began singing gospel music to keep our spirits up. It helped us not to think about the danger. After many hours, lots of us, including me, were vomiting. One girl who had been vomiting severely died. I can't say what happened to her body. I try never to think about it. I'm also afraid for my safety.

"After many hours of this, a big wave came and covered the boat. Everyone was shouting, water was pouring into the boat. I thought we were dead. We were all crying, we had no idea which direction we were going in or which direction we had come from. Everyone was panicking but then the engine suddenly started again. We all worked hard to bail out the water and we continued the journey. We were at sea for another three or four hours. I remember thinking it felt like the ocean kept opening up, swallowing our boat and spitting it back out again. We were rescued by the police as we neared the coastline. Moments after they picked us all up, our boat broke in two. If we had not been rescued, we would certainly have died at sea. The other two boats disappeared. To this day I don't know what happened to them. I was in detention on the island for many days but we heard nothing.

"Back in Nigeria, the situation was even worse. I started trying to save money again. I met a friend who had some money and we agreed to try to make the journey again. We went from Nigeria to Benin, through Togo and Burkina Faso and into Mali. There we paid a truck driver to take us to Morocco but he dropped us in the middle of the desert in Algeria. We were left there for two days with no water. Some people died, including my friend and travel companion, John. Luckily for us, the authorities rescued us again. It was the Algerian police this time, they found us in the desert and sent us back to Mali. That saved my life.

"I gathered together as much money as I could and started out again. I'm back on the road now, working where possible and trying to save enough money to take the boat again. I am, of course, very afraid of making this boat journey again but there is no other way. I and other people like me feel we have no choice. I have to try to make a better life, I pray God will see me through."

Source: BBC, 12 September 2006.

Case study: Sue

"My name is Sue. I am a primary school teacher and come from Asia. My parents have passed away and I have one brother and two sisters. I have two daughters; one is 8 years old and the other is 16 months old. My youngest daughter was born in Europe.

"I came to Western Europe because I am a member of a group that opposed my Government. Before I left my country, I was arrested by the Government because I was a member of this group. I was detained for five days. I was pregnant at the time. My friend acted as guarantor to bail me out of detention and helped me to leave the country illegally. I found a migrant smuggler to get me out of the country. My definition of a migrant smuggler is that they are not a good person; they are part of a gang who make money by doing illegal things. I agreed to pay around

$10,000 in order to come to Europe. The arrangement was that when I arrived in the UK they would ring my family to let me inform them that I had arrived ok, then my family would transfer the money to them.

"The money was borrowed from my friends and family. Some came from a money lender with interest. I promised my family that when I found a job in Europe I would pay them back. I am willing to do any job; working in a factory, for instance, or looking after children.

"On the day I left, I took a taxi to the airport, where a smuggler from my country was waiting for me. I had some clothes with me, and around $85. The smuggler gave me a boarding pass to Central Asia; he showed me a passport with my name in it but did not give it to me. I thought maybe the passport was fake. The smuggler told me I would have to meet another man at this next airport in a coffee shop. I went on a plane and arrived in Central Asia, and found the coffee shop. The next man—a European-looking man—came in and bought me a cup of coffee. We waited for around five hours and he took me on another plane. He had two passports with him; I didn't see inside them. We flew for a few hours and then landed in Eastern Europe. When we left the airport, there was a man waiting in a car for us. I sat in the back seat. The driver and the man I travelled with then took me to a house in the country where I was taken to an empty room and locked inside. I stayed there for around 13 days; they gave bread and water twice a day.

"Finally, a man I had never seen came to take me on a lorry. He had blue eyes. I was told to hide behind boxes. We stopped five or six times during the journey. After a long time, the lorry stopped in Western Europe. The driver opened the door, passed me a mobile phone and on the other end was a man who spoke my language. He told me to tell my family that I had arrived in Western Europe. I briefly spoke with them, and then the phone was hung up. The driver got in the lorry and drove away. I wandered around the streets asking people for help. I found an apartment for $40 a week which my family helped me to pay for.

"Later I found a solicitor who helped me to apply for asylum. The solicitor was a Western European who used an interpreter who could speak my language. Soon after this, my second daughter was born.

"One day, when I went to claim my benefit, I was arrested. They took my baby and me to a detention centre."

Raising the fee to be smuggled

In many cases, migrants seeking to be smuggled must either sell their property (land or chattel) to raise the necessary money or, more commonly, obtain some form of credit. They often borrow from friends, relatives or loan sharks; some take out bank loans.

Migrants who incur large debts in paying to be smuggled find themselves under great pressure to make enough money to settle those debts. The pressure placed on them by the smugglers to repay the costs of smuggling, the expectations of family members and the accumulation of debts as the journey progresses contribute to that pressure and reduce the migrant's likelihood of being able to return home. Even if he or she cannot complete the journey, the migrant must find a way to settle his or her debts.

Indebtedness to a smuggler who has offered to cover the cost of smuggling on condition of repayment renders the migrant extremely vulnerable to exploitation, trafficking or debt bondage.

Case study: Albania to Italy

Small, flexible smuggling businesses were established in Valona, Albania. By the end of the 1990s, between 150 and 300 people per night could be transported from Valona to Italy. It was estimated that about 50 rubber dinghies were used by those businesses in 1999. The dinghies were about 10 metres long and were completely emptied for the purpose of transporting illegal migrants. Some were equipped with two engines. Each craft carried 15 to 40 people in crouching position; the migrants were concealed under a canvas sheet. The dinghies would set out together at night, travelling in formation so as to be able to offer each other assistance if necessary. They would then fan out as they approached Italian territorial waters, using the lighthouses of Santa Cesarea Terme, Otranto and San Cataldo as their points of reference.

The fee for the journey was variable: $400 to $450 for those paying the boat owner directly and $600 to $650 for those who used the services of a middleman. The annual turnover of the smuggling businesses in 2000 was estimated to be between $30 million and $60 million.

Recommended resources

United Nations Office on Drugs and Crime. *Smuggling of Migrants Into, Through and From North Africa: A Thematic Review and Annotated Bibliography of Recent Publications.*

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *The smuggling of migrants from a global perspective: a thematic review.*

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

2.3 Forms of smuggling of migrants

The smuggling of migrants can take many forms. It may be planned in advance and highly organized, involving the use of sophisticated methods such as falsified travel documents, or a simple process whereby a migrant pays a smuggler to guide him or her over a border from a border town. In addition, the number of criminal actors involved can vary enormously, from one person to an extensive network spanning several countries and more than one continent. It is often assumed that the smuggling of migrants is dominated by hierarchically organized criminal groups who use established smuggling routes (such as those used for drug trafficking). While this might be true in certain countries and regions, there are also many smaller, flexible criminal groups or individual criminals that conduct smuggling operations on the basis of demand. Although such groups may form networks, those networks should not be confused with organizations characterized by a mafia-style hierarchy.

The categories below are generalized representations of some—but by no means all—of the processes involved in the smuggling of migrants, with particular emphasis on the organizational aspects of such smuggling. This typology was developed by Matthias Neske, researcher at the Institute for Migration and Ethnic Studies, Amsterdam, on the basis of interviews with experts and the examination of records of court proceedings in Germany relating to 51 cases in which a total of some 20,000 persons were smuggled by several hundred smugglers.

"Individual smuggling with a high degree of self-responsibility"

This form of smuggling entails the independent organization by the migrant of his or her journey without prior arrangement with a smuggler or smugglers. Such migrants typically travel alone and by public transport, but at a certain stage in the journey enlist the help of a local smuggler or smugglers, for instance, to cross a border illegally.

For more details, see Matthias Neske, Human smuggling to and through Germany, *International Migration*, vol. 44, No. 4 (2006).

Case study: Gheorghe

Gheorghe is 35 years old and lives in the capital of an Eastern European country. He has been jobless for several years, and has travelled to Western Europe three times in search of a job. Twice he was apprehended when crossing a border and sent back to his home country. On the third attempt he succeeded in entering a Western European country illegally and worked in that country for one and half years before returning to his home country.

When the money he had earned abroad began to run out, he decided to migrate again. He obtained a visa for a nearby country and travelled there by bus. He then took another bus to the border of a Central European country, which he entered on foot. Having failed to find work, he decided to go to Western Europe. Fearing that it was too dangerous to attempt to illegally enter a Western European country alone, Gheorghe decided to enlist the services of a smuggler. After a few days of searching, he met a man from his home country who assured him that he knew the border region very well. Gheorghe paid the smuggler a fee equivalent to about $150. The smuggler drove Gheorghe to a location close to the border and guided him over the border on foot. Having just crossed the border, Gheorghe was apprehended by a border police patrol, while the smuggler managed to escape. Gheorghe told the police that he did not have a fixed plan and that he might have tried to stay in that country or to travel onward to another, even though he did not have any contacts to whom to turn.

"Covered smuggling" (smuggling of migrants through the abuse of documents)

The role of the smuggler may be to assist the illegal migrant in obtaining a passport, visa or residence or other documents fraudulently, including by means of fraudulent applications, modification of authentic documents or counterfeiting. Once those documents are obtained, the migrant often travels to his or her destination alone.

Case study

Mr. M., a businessman, organized tourist travel to a Western European country of which he was a national. Mr. D., a businessman from southern Africa, lived in Central Asia. Mr. M. and Mr. D. had known each other for several years. At the end of the 1990s they decided to cooperate in obtaining visas for Central Asian citizens fraudulently.

Through newspaper advertisements, Mr. D. identified Central Asian citizens who wanted to migrate to a European Union member State. He provided their names and birth dates to Mr. M., who then prepared invitations and agendas for purported "business trips" to Western Europe. He also completed the formalities that are part of the procedure for obtaining a visa to a Western European country, obtaining for each traveller health and private liability insurance, the latter providing cover for possible deportation costs. He would then sign an official declaration stating that he was able to cover any costs arising from the traveller's stay in Western Europe. Mr. M. would make a reservation for three days in a cheap hotel in the destination city for each traveller. Lastly, Mr. M. would send all the documents, including the hotel reservation, the official invitation and the agenda for the "business trip", to Mr. D., who in turn submitted them to the embassy of the Western European country concerned. Mr. D. then provided the migrants with their visas, and the migrants travelled alone through the Western European country for which they had a visa to other destination countries within the European Union.

Mr. M. and Mr. D. are believed to have facilitated the illegal migration of some 6,000 Central Asian citizens in return for a fee of up to $2,000 per person. Mr. M. was sentenced to seven and a half years of imprisonment.

Case study: sham marriages scam

Over 80 sham marriages between men seeking to remain in country X and female citizens of that country were organized by a man and his girlfriend. Mr. S., the main organizer of the scam, found suitable "brides" and submitted false supporting documents to authorities requesting that the "grooms" be allowed further leave to remain in the country. He used the name of a reputable firm of solicitors to carry out his activities. The scam was uncovered by an investigative journalist who posed as an immigrant seeking to stay in country X and met with Mr. S. to arrange a bogus marriage. Mr. S. promised to organize the necessary documentation in a service he called "everything under one roof".

Following the arrest of Mr. S. and his girlfriend, police found blank marriage certificates and counterfeit documents, including passports, during searches of the various addresses used by Mr. S.

Mr. S. was sentenced to five years' imprisonment and a number of the "brides" and "grooms" were arrested and prosecuted for their involvement in the scam.

"Pre-organized stage-to-stage smuggling"

The smuggling process is pre-organized, which means that the migrants themselves do not have to conduct negotiations with local smugglers during their journey. "Stage coordinators"—a chain of individuals who act independently but in close cooperation—carry out those negotiations with "local service providers", whom the coordinators pay. Local service providers are typically nationals or residents of the transit country who are responsible for a specific stage of the process.

The stage coordinators and smuggled migrants usually have the same ethnic background. Each stage coordinator outsources those smuggling activities that involve direct contact with the migrants either to a "local coordinator", who in turn outsources the work to a local service provider, or directly to a local service provider.

Migrants are accompanied by smugglers for most of the journey. It is unusual for one individual to mastermind and control the whole process from origin to destination.

The relationship between coordinators and service providers is characterized by the following aspects:

- The local service providers' "wrong" ethnic background and their lack of contacts may make it difficult for them to become coordinators themselves
- Service providers and coordinators are not part of one organization; rather, they are part of a process which is based on market principles and is driven by profit. However, over time, successful cooperation between them can result in the "networkization" of relationships similar to the establishment of a circle of regular customers.

In cases of pre-organized smuggling from non-crisis regions, the majority of the migrants are single males and females. Among such migrants, Neske identified two subtypes:

- Migrants who intent to join family or community members who have already established a home in the destination country. Such migrants are usually expected in the target country by those family or community members, who in most cases commission the smuggler or smugglers to carry out the smuggling operation
- Migrants who are sent by their community to a destination country in which they have no contacts. Typically, a family or village community suffering from poor living conditions commissions a smuggler or smugglers to carry out the smuggling operation. The smuggling fees are often advanced by the smugglers, which makes the migrant particularly vulnerable to trafficking and exploitation in the destination country.

In cases of pre-organized smuggling from crisis regions, the smuggled migrants usually rely on existing contacts abroad and on sufficient financial resources. Such cases include those in which either a whole family or more than one member of a family migrate together. Countries of origin are usually those which are experiencing crises as a result of conflict. Destination countries are usually those in which the migrant has a good chance of being granted asylum. It is important to note in that regard that in many such cases, the persons smuggled are refugees. The right to apply for asylum is upheld regardless of the means by which the smuggled person gained entry into the destination country.

Case study

A is from the Indian subcontinent but has lived for many years in Eastern Europe. He works in the textile import and export business.

He is also a typical "stage coordinator". That is, he is responsible for receiving smuggled migrants from the Indian subcontinent in Eastern Europe, arranging housing and preparing their onward travel to their next destinations (usually in Western Europe). In that role, he collaborates with other stage coordinators from the Indian subcontinent and with "local service providers" (who are usually nationals or residents of countries on the smuggling route and who carry out the practical activities that are part of the smuggling operation, such as driving or guiding the migrants over the border). Once a stage of the operation is successfully completed, the migrants call the responsible stage coordinator to inform him or her of that fact. The stage coordinator then pays the local service providers.

A also maintains contact with the stage coordinator on the Indian subcontinent who coordinates the migrants' departure. That coordinator, together with the other stage coordinators involved, determines the route and the fee to the targeted destination country.

In a typical case in which A was involved, the smuggled migrants flew with falsified passports from the Indian subcontinent to West Asia. On their arrival in West Asia, a stage coordinator collected the passports and sent those passports back to the Indian subcontinent. The stage coordinator also arranged the migrants' onward travel by lorry to an Eastern European country. From there, another stage coordinator arranged the migrants' travel to another Eastern European country, where a third stage coordinator arranged a further journey by van. At that point, A organized the next stage of travel to Western Europe by outsourcing that task to B, an Eastern European citizen. B drove the migrants close to the border, where they were handed over to C who in turn guided them over the border on foot. On the other side, the migrants were picked up and brought in a small van to a town in Western Europe where the next stage coordinator, E (a friend and relative of A), lived. From there, the migrants called A to inform him of their

arrival. E then contacted D, the stage coordinator of the destination country. E again outsourced the actual smuggling to local smugglers, who drove the migrants in cars to their final destination. In some of the cars the migrants were hidden in the luggage trunk. D received the smuggled migrants. Most of the migrants had relatives in the destination country who collected them from D. It was proven that most of those relatives had requested the smuggling operation.

Recommended resources

The typology set out above was developed by Matthias Neske on the basis of interviews with experts and the examination of records of court proceedings in Germany relating to 51 cases in which a total of some 20,000 persons were smuggled by several hundred smugglers.

For more details, see:

Matthias Neske, Human smuggling to and through Germany, *International Migration*, vol. 44, No. 4 (2006).

European forum for migration studies

www.efms.de

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and migrant smugglers in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving law enforcement and prosecution experts from several regions of the world.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. Issue Paper: *A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations Office on Drugs and Crime. *Smuggling of Migrants Into, Through and From North Africa: A Thematic Review and Annotated Bibliography of Recent Publications*.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *The smuggling of migrants from a global perspective: a thematic review.*

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

Further reading

Andreas, Peter (2001). The Transformation of Migrant Smuggling across the US-Mexican Border. In *Global Human Smuggling: Comparative Perspectives*, Rey Koslowski and David Kyle, eds. Baltimore: Johns Hopkins University Press.

Aronowitz, Alexis A. Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive it and the Organisations that Promote it. *European Journal on Criminal Policy and Research*, vol. 9, No. 2 (June 2001).

Available from www.springerlink.com/index/T37653835V31G505.pdf.

Aronowitz, Alexis A. *Illegal Practices and Criminal Networks involved in the Smuggling of Filipinos to Italy*. Executive summary. United Nations Interregional Crime and Justice Research Institute, 2003.

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Beare, Margaret E. Illegal Migration: Personal Tragedies, Social Problems, or National Security Threats? In *Illegal Immigration and Commercial Sex: The New Slave Trade*, Phil Williams, ed. London: Frank Cass and Co. Limited, 1999.

Burrows, John, and Sarah Webb. *Organised immigration crime: a post-conviction study.* Research Report 15. London: Home Office, 2009. Available from www.homeoffice.gov.uk/rds/pdfs09/horr15c.pdf.

Chin, Ko-Lin, Sheldon Zhang and Robert J. Kelly. Transnational Chinese Organized Crime Activities: Patterns and Emerging Trends. In *Combating Transnational Crime: Concepts, Activities and Responses*, Phil Williams and Dimitri Vlassis, eds. London: Frank Cass and Co. Limited, 2001.

European Police Office. OCTA 2009 EU *Organised Crime Threat Assessment*. The Hague, 2009.

Available from www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA2009.pdf.

Heckmann, Friedrich. Illegal Migration: What Can We Know and What Can We Explain? The Case of Germany. *International Migration Review*, vol. 38, No. 3 (2004).

Içduygu, Ahmet, and Sule Toktas. How do Smuggling and Trafficking Operate via Irregular Border Crossings in the Middle East? Evidence from Fieldwork in Turkey. *International Migration*, vol. 40, No. 6 (December 2002).

Kaizen, Julie and Walter Nonneman. Irregular Migration in Belgium and Organized Crime: An overview. *International Migration*, vol. 45, No. 2 (June 2007).

Salt, John. Trafficking and Human Smuggling: A European Perspective. *International Migration*, vol. 38, No. 3 (Special Issue No. 1, 2000).

Sarrica, Fabrizio. *The Smuggling of Migrants. A Flourishing Activity of Transnational Organized Crime*. Crossroads, vol. 5, No. 3 (2005).

Schloenhardt, Andreas. *Organised Crime and Migrant Smuggling: Australia and the Asia-Pacific*. Research and Public Policy Series, No. 44. Canberra: Australian Institute of Criminology, 2002.

The aim of this study is to explain the organized crime aspect of smuggling of migrants in the region of Asia and the Pacific. In order to develop appropriate and effective counter-measures, the study seeks to identify and investigate the structural patterns of smuggling of migrants. The report includes a brief discussion of what organized crime is and how it can best be approached. It examines why, when and where organized crime and the smuggling of migrants take place. This provides the theoretical background for a detailed analysis of the organizational and operational aspects of smuggling of migrants in Australia and the region of Asia and the Pacific.

The study is available from www.aic.gov.au/documents/9/7/E/%7B97EFC2BE-3D43-4E9B-B9D0-4AC71800B398%7Drpp44.pdf.

Spener, D. (2001). Smuggling Migrants through South Texas: Challenges Posed by Operation Rio Grande. In *Global Human Smuggling: Comparative Perspectives*, Rey Koslowski and David Kyle, eds. Baltimore: John Hopkins University Press.

Transnational Organized Crime: Impact from Source to Destination. Background paper prepared for the Vienna Forum to Fight Human Trafficking, Vienna, 13-15 February 2008. Available from www.unodc.org/documents/human-trafficking/Marika-Misc/BP027TransnationalOrganizedCrimeandHumanTrafficking.pdf.

United Nations Office on Drugs and Crime, Regional Office for South Asia. *Smuggling of Migrants from India to Europe and in particular to the UK: A Study on Tamil Nadu*. New Delhi, 2009.

The aim of this study, commissioned by the United Nations Office on Drugs and Crime Regional Office for South Asia in collaboration with the Institute of Social Sciences, New Delhi, is to assess the current extent and nature of irregular migration from Tamil Nadu with the aim of improving evidence-based knowledge on the profile of irregular migrants, the modus operandi of agents, the countries to which migration is destined and the Government response to curbing irregular migration.

www.unodc.org/documents/human-trafficking/Smuggling_of_Migrants_from_India.pdf

Zhang, Sheldon, and Mark S. Gaylord. Bound for the Golden Mountain: The Social Organization of Chinese Alien Smuggling. In *Crime, Law and Social Change*, vol. 25, No. 1 (March 1996).

2.4 The role of document abuse

Falsification (counterfeiting) of travel documents

Improved border controls have led to the increased use of more sophisticated and high-quality counterfeit travel documents.

Forged or falsified documentation is most likely to be used at seaports and airports, where documentation is always checked. Many smuggled migrants do not carry genuine identity documents. Smugglers may provide migrants with counterfeited, stolen or altered travel documents to conceal the migrants' true identity. In some cases, smugglers collect those documents once they are no longer needed so as to reuse them later.

Criminal networks are known to apply to embassies or consulates for travel documents (mainly visas but also passports), either directly, under the pretext of a legal business activity, or through the tourist travel sector.

One cause for concern is the frequency with which blank passports and visas are stolen from consulates around the world. Such documents are then easily altered and "issued" to migrants or passed on to other persons for use in criminal activities.

The use of other documentation, such as seaman's books and joining letters from shipping companies, are also used to enable persons to enter or transit a country without a visa.

The main types of documentation used to facilitate illegal entry into the European Union include:

- *Passports*
  - The various types of fake passport seized by law enforcement agents include those that are entirely fake and genuine passports that have been altered, often by replacing the photograph or tampering with the biographical data page.

- *Visas*
  - Visas may be falsified or obtained fraudulently, for example by means of a fraudulent student or tourist visa application.
  - A further modus operandi of illegal migrants is to obtain a visa legitimately but then to remain in the destination country beyond the expiry date of the visa. This is known as "overstaying". Entry and exit stamps are often falsified to indicate that a person has left the country or region when in fact he or she has not. In some cases, a migrant may not require a visa for the destination country but remains in that country longer than he or she is entitled to.

- *Permits*
  - Residence and work permits are also susceptible to forgery. There have been cases in which illegal immigrants claim asylum in one State while already holding a permit entitling them to reside in another.
- *Abuse of genuine travel documents by imposters (lookalikes)*
  - Some illegal migrants use a passport that belongs to another person with similar features.

It is becoming increasingly apparent that the abuse of documents plays a role of growing importance in facilitating irregular migration. As a result of strengthened border security in several States in recent years, many would-be migrants have turned to the services of migrant smugglers, who have developed and are continuing to develop new ways and means of facilitating such migration.

Migrant smuggling through document abuse is rapidly becoming a growing business for migrant smugglers. This is borne out by growing evidence, in recent years, of the increasing importance of organized document abuse in the smuggling of migrants from Eastern Europe and the Caucasus to countries of the European Union. There are numerous forms of document abuse, such as identity theft, use of counterfeit documents, use of lookalikes and fraudulent visa applications.

Many States have already developed a high level of expertise in combating document abuse and have established internal information exchange and training mechanisms to ensure that their efforts to tackle such abuse are effective. However, a number of other States continue to lack such capacity, a situation that is exploited by organized crime groups. Given the transnational nature of the production, procurement and distribution of counterfeit documents and other forms of organized document abuse, it is clear that lack of capacity in origin and transit countries has a major impact on destination countries.

Case study

Gang jailed for running passport factory, 19 January 2009.

A gang of passport counterfeiters were sentenced to a combined total of twelve years and two months' imprisonment for running one of the most sophisticated and highly organized counterfeit document factories detected in recent years. All five members of the gang were served deportation orders.

The gang had been running a passport factory from a residential address in the United Kingdom, making Spanish and Portuguese identity documents, driving licences and British national insurance cards. Sophisticated card and hot foil printing equipment were found at the address. The operation was well organized, with three separate workstations replicating the various stages of manufacture. Detectives found dry embossing stamps bearing official passport crests ready to be placed on the front covers of the counterfeit passports.

A thorough search of the premises revealed two safes containing numerous documents and on open display were in excess of 300 blank Spanish, Italian and Portuguese passports and 400 blank Portuguese identity cards. There was evidence that numerous false documents, including utility bills, had been made and sold, and that orders were being prepared, with numerous passport

photographs awaiting use. The group was believed to be manufacturing European Union identification documents to enable non-European Union citizens to remain in the United Kingdom illegally and to find employment there.

The group was brought to justice by Operation Maxim, a dedicated team of police and immigration officers working together on intelligence-led operations targeting persons involved in organized immigration crime, including smuggling of migrants, trafficking in persons and abuse of identity documents, in particular the use of counterfeit passports.

In some cases in which visas are obtained by artifice on behalf of an illegal migrant, that migrant can undertake the entire journey without the assistance of smugglers once the necessary documents have been obtained. In others, as few as two smugglers are able to organize the entire process; however, complex organized crime groups may also be involved in facilitating migrant smuggling through document abuse.

In cases in which smugglers are involved throughout the migrant's journey, a coordinator in the country of origin liaises with a coordinator in the target country, who arranges "cover" for the migrant by informing the relevant authorities that he or she is responsible for the traveller. In some cases, the coordinator him- or herself acts as the person issuing the visa invitation; in other cases, he or she entrusts another person with that task.[1] The migrant then receives the necessary paperwork and can travel independently across borders. However, where the "cover" is provided in the form of an invitation issued to a group of tourists, a migrant travelling alone may be detected more easily by law enforcement agencies.

Smugglers involved in this type of smuggling rarely see themselves as smugglers but rather as "travel agents". Smugglers often demand excessive fees for their services. The smuggled migrants do not have direct contact with the "agents"; the smuggling process consists of several phases that vary from case to case. In the majority of cases, smugglers are not involved in finding jobs for smuggled migrants. The involvement of coordinators who help migrants to obtain visas by artifice generally ends at the point at which the visa is handed over to the migrant.

Case study

Mr. M., a businessman, organized tourist travel to a Western European country of which he was a national. Mr. D., a businessman from southern Africa, lived in Central Asia. Mr. M. and Mr. D. had known each other for several years. At the end of the 1990s they decided to cooperate in obtaining visas for Central Asian citizens fraudulently.

Through newspaper advertisements, Mr. D. identified Central Asian citizens who wanted to migrate to a European Union member State. He provided their names and birth dates to Mr. M., who then prepared invitations and agendas for purported "business trips" to Western Europe. He also completed the formalities that are part of the procedure for obtaining a visa to a Western European country, obtaining for each traveller health and private liability insurance, the latter providing cover for possible deportation costs. He would then sign an official declaration stating that he was able to cover any costs arising from the traveller's stay in Western Europe. Mr. M. would make a reservation for three days in a cheap hotel in the destination city for each traveller.

[1] Persons asked to issue official invitations are often unaware that they are facilitating the smuggling of migrants. They may be deceived by the coordinator, or may be dependent on the commission that they receive for such work.

Lastly, Mr. M. would send all the documents, including the hotel reservation, the official invitation and the agenda for the "business trip", to Mr. D., who in turn submitted them to the embassy of the Western European country concerned. Mr. D. then provided the migrants with their visas, and the migrants travelled alone through the Western European country for which they had a visa to other destination countries within the European Union.

Mr. M. and Mr. D. are believed to have facilitated the illegal migration of some 6,000 Central Asian citizens in return for a fee of up to $2,000 per person. Mr. M. was sentenced to seven and a half years of imprisonment.

For information on responding to document abuse, see Tool 6, section 6.13, and Tool 10, section 10.5

Recommended resources

European Police Office. *Facilitated illegal immigration into the European Union*. Fact sheet available from www.europol.europa.eu/publications/Serious_Crime_Overviews/Illegal_Immigration_Fact_Sheet_2009.PDF.

Heckman, Friedrich. *Towards a better understanding of human smuggling*. Policy Brief No. 5. Amsterdam: European Network of Excellence on International Migration, Integration and Social Cohesion (IMISCOE), November 2007.

Matthias Neske. Human smuggling to and through Germany. *International Migration*, vol. 44, No. 4 (2006).

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and migrant smugglers in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving law enforcement and prosecution experts from several regions of the world.

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2.5 The role of corruption in the smuggling of migrants

What is corruption?

There is no comprehensive, universally accepted definition of corruption. Attempts to develop such a definition invariably meet with legal, criminological and, in many countries, political problems.

The United Nations Convention against Corruption, rather than defining the phenomenon, provides for a wide range of acts of corruption, including bribery, embezzlement of public funds, money-laundering and obstruction of justice. It also requires States to establish those acts as criminal, civil or administrative offences. The Convention addresses, inter alia, preventive measures, criminalization, law enforcement, international cooperation and recovery of assets obtained through corruption.

Transparency International (www.transparency.org) offers a working definition of corruption as the abuse of entrusted power for private gain. The World Bank defines corruption as the abuse of public power for private benefit.

Corruption can also be understood to mean:

- The promising/giving/requesting/accepting of an undue advantage
- Active or passive bribery
- Trading in influence
- Breach of trust
- Accounting offences.

Corruption in the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption

The United Nations Convention against Transnational Organized Crime covers many substantive and procedural issues relating to corruption. Many of its provisions use language identical to that of the United Nations Convention against Corruption to describe a number of offences. However, there are some differences between the two instruments:

- Criminalization of bribery: articles 15 and 16 of the United Nations Convention against Corruption and article 8 of the United Nations Convention against Transnational Organized Crime
- Criminalization of obstruction of justice: article 23 of the United Nations Convention against Transnational Organized Crime and article 25 of the United Nations Convention against Corruption

- Criminalization of money-laundering: article 23 of the United Nations Convention against Corruption and article 6 of the United Nations Convention against Transnational Organized Crime.

Corruption and the smuggling of migrants

Corruption is both a means and an end of migrant smuggling. It is not only the process of smuggling of migrants itself that offers opportunities for corruption but also the criminal justice response to such smuggling and the provision of services to intercepted migrants.

Bribery is arguably the most common form of corruption used in the smuggling of migrants.

United Nations Convention against Corruption

Article 15—Bribery of national public officials

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

The process of smuggling of migrants offers a number of opportunities for corrupt practices:

- Recruitment
- Documentation
- Transportation
- Border crossings
- Control over migrants
- Exploitation of migrants during their journey
- Laundering/investment of proceeds.

The following are some of the actors that may be involved in corruption during the smuggling process:

- Police and other law enforcement officers
- Customs officials
- Visa offices/embassies
- Border control agencies
- Immigration services

- Translation and interpretation services
- Local public officials
- Intelligence/security forces
- National or international military forces
- Individuals or groups who have influence in particular communities
- Private sector actors, including:
  - Travel agencies
  - Airlines
  - The transportation sector
  - Financial institutions
  - Banks.

Case study: Suleiman

The first time Suleiman was smuggled abroad, the plan was to fly to Dushanbe then continue overland to Moscow. The first stage was fine—Suleiman boarded the aeroplane in Karachi with a fake Pakistani passport without any problems. The agent who accompanied him to the airport told him that at the airport in Dushanbe he would be met by another agent, named Nafi.

When he arrived in Dushanbe, however, he was arrested as soon as he stepped off the aeroplane. He was imprisoned for four weeks with other Afghan illegal migrants, interrogated, beaten regularly and threatened with torture. After a month, for no apparent reason, he was collected one night from his cell and driven back to the airport at Dushanbe. Nafi was waiting for him. Nafi explained that on the flight from Karachi with Suleiman there had been another 50 illegal immigrants, their journey organized by several other agents in Pakistan. One agent had failed to bribe immigration officials at Dushanbe airport, so they had arrested those they understood to be the "clients" of that particular agent. Suleiman had been arrested as a result of mistaken identity.

The second time Suleiman tried to leave Pakistan was to fly directly to Amsterdam. He flew with an agent from Peshawar to Karachi, where he was accommodated in a bungalow for the day. That night the agent picked him up and took him to the airport. He was told to wait in the car. A few minutes later the agent returned with an immigration official. This official personally accompanied him through check-in and immigration into the departure lounge. A few minutes before boarding the aeroplane, however, Suleiman was asked into a room to be interviewed by a Dutch airport liaison officer. He spotted immediately that Suleiman's Pakistani passport was a forgery—Suleiman said even he could see it was forged, so poor was the quality. The airport liaison officer called in the immigration official who had been accompanying Suleiman and asked Suleiman to wait outside. Five minutes later the immigration official came out and accompanied Suleiman back through the airport and out to the car, where the agent was still waiting. He explained that he had forgotten to bribe the airport liaison officer, but that he had just paid him enough to avoid being reported.*

**Source:* Koser, Khalid. Migrant Smuggling: Theoretical and Empirical Perspectives from Pakistan, Afghanistan and the UK. Presentation delivered at the Mobility, Ethnicity and Society Conference, University of Bristol, 16-17 March 2006

How does corruption harm societies?

Corruption is a serious crime that weakens societies, inter alia, by:

- Hindering social and economic development and increasing poverty by diverting domestic and foreign investment away from where it is most needed
- Weakening education and health systems, thus depriving people of the basic building blocks of a decent life
- Undermining democracy by distorting electoral processes and also undermining government institutions, thus potentially leading to political instability
- Exacerbating inequality and injustice by perverting the rule of law and punishing victims of crime through corrupt rulings.

Promising practices

Strategies against corruption

The Council of Europe Programme against Corruption and Organised Crime in South-Eastern Europe suggests various strategies that can be used to combat trafficking in persons. Many of those strategies can be deployed also in combating the smuggling of migrants, inter alia:

- Acknowledgement of the problem: inclusion of the issue of corruption in anti-smuggling plans
- Trust-building
- Establishment of specialized multi-agency units
- Organization of multi-agency training
- Prevention: codes of conduct, guidelines, regulations governing conflicts of interest and careful monitoring of groups at risk
- Targeting of officials susceptible to corruption and investigation of the finances of suspects
- More systematic use of information provided by migrants and by non-governmental and civil society organizations
- Engagement of non-governmental organizations and the international community in monitoring investigations
- Organization of awareness campaigns and involvement of the media
- Strengthening of international cooperation through accession to international conventions and monitoring systems
- Organization of regional networks
- Seeking of technical assistance from international organizations and bilateral donors.

What can States and individuals do to fight corruption?

Say “No” to corruption.

Here are some examples of how States and individuals can say "No" to corruption:

- Ratify and enact the United Nations Convention against Corruption. *Countries that successfully tackle corruption are far more legitimate in the eyes of their citizens, thus creating stability and trust.*
- Know what the Convention requires of your Government and its officials. *Rooting out corruption facilitates social and economic development.*
- Educate the public about the Government's responsibility to be corruption-free. *Equitable and fair justice for all is crucial to a country's stability and growth. It also helps to fight crime effectively.*
- Raise awareness among the public, the media and Governments about the cost of corruption to key services such as health and education. *Society as a whole benefits from basic services that function effectively.*
- Educate the youth of your country about what ethical behaviour and corruption are and how to fight corruption, and encourage them to demand their right to such information. *One of the ways to ensure a brighter future is to ensure that future generations of citizens are brought up to expect corruption-free countries.*
- Report incidents of corruption. *Create an environment in which the rule of law prevails.*
- Refuse to participate in any activities that are not legal and transparent. *A corruption-free business environment encourages both domestic and foreign investment.*
- Foster economic stability by enforcing policies of zero tolerance towards corruption. *A transparent and open business community is the cornerstone of any strong democracy.*

Recommended resources

Anti-Slavery International, Transparency International and the United Nations Office on Crime. *The role of corruption in trafficking in persons*. Background paper prepared for the side event "The role of corruption in trafficking in persons" at the third session of the Conference of the State Parties to the United Nations Convention against Corruption, Doha, 9-13 November 2009. Available from www.unodc.org/documents/human-trafficking/Corruption_and_trafficking_Doha_final.pdf.

Council of Europe. Codes of conduct for public officials: *Recommendation Rec(2000)10 and explanatory memorandum*. Strasbourg, 2001.

This model code of conduct for public officials has three objectives: to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards of integrity and to inform the public of the conduct it is entitled to expect of public officials.

http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=785

Spencer, Jon, and others. *Organised crime, corruption and the movement of people across borders in the new enlarged EU: A case study of Estonia, Finland and the UK*, HEUNI Paper No. 24. Helsinki: The European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), 2006.

www.heuni.fi/Etusivu/Publications/HEUNIpapers

Transparency International Corruption Fighters' Tool Kit

The Corruption Fighters' Tool Kit is a compendium of practical civil society anti-corruption experiences described in concrete and accessible language. It presents innovative anti-corruption tools developed and implemented by Transparency International National chapters and other civil society organizations from around the world. The publication highlights the potential of civil society to create mechanisms for monitoring public institutions and to demand and promote accountable and responsive public administration.

www.transparency.org/tools/e_toolkit

United Nations Convention against Corruption

www.unodc.org/unodc/en/treaties/CAC/index.html

United Nations Convention against Transnational Organized Crime and the Protocols thereto

www.unodc.org/unodc/en/treaties/CTOC/index.html

United Nations Office on Drugs and Crime. *Self-assessment checklist on the implementation of the United Nations Convention against Corruption and the United Nations Convention against Transnational Organized Crime*.

This self-assessment checklist, which can be used, inter alia, for self-assessment of implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, uses omnibus survey software available from www.unodc.org/unodc/en/treaties/CAC/self-assessment.html.

United Nations Office on Drugs and Crime. *United Nations Anti-Corruption Toolkit*, third edition, September 2004.

This Toolkit is part of a larger package of materials intended to provide information and resource materials for countries developing and implementing anti-corruption strategies at all levels, as well as for other elements of civil society with an interest in combating corruption.

www.unodc.org/documents/corruption/publications_toolkit_sep04.pdf

"Your No Counts" international anti-corruption campaign

The website of the "Your No Counts" international anti-corruption campaign provides a number of resources to support efforts to fight corruption.

www.unodc.org/yournocounts/

A list of anti-corruption intergovernmental organizations can be found at www.unodc.org/yournocounts/en/resources/index.html.

2.6 Key financial transactions in the smuggling of migrants

Smuggling fees and payment modalities

Illegal migrants generally have to pay a fee to be smuggled. The fee is usually paid as follows:

- In advance by the migrant or his or her family:
  - The advance is often 50 per cent of the total fee, the balance being due on the migrant's arrival in the destination country
  - Advance payments are often made to a third party or middleman rather than directly to the smuggler. The third party may issue a receipt to the migrant, his or her family and the smuggler. The money is then given to the smuggler only once the migrant's family has confirmed the migrant's safe arrival to the third party
  - Some smugglers reimburse fees if the smuggling operation is unsuccessful, and may even offer to attempt the operation again at no extra cost
- En route to various actors involved in the operation at different stages of the journey
- On the basis of "credit": the migrant is smuggled on the basis of payment being made either on arrival or after an agreed period of time. This renders the migrant particularly vulnerable to trafficking or debt bondage.

The payment modality varies depending on the origin of both the smuggler(s) and the smuggled migrant and the nature of the smuggling.

Payments in cash:

- Must generally be made in convertible currencies.

Trust systems:

- Require a high degree of organization
- Often require a closer relationship between smugglers and smuggled migrants than in the case of cash transactions
- Often require a closer relationship between the smugglers involved.

Bank transfers:

- May be used where the appropriate infrastructure to support such transactions is available, e.g. in large cities.

Fees paid for smuggling services vary widely, depending on such factors as:

- The means of transport used
- The "guarantees" offered
- Additional services such as the provision of forged documents
- Whether the whole journey is organized by one provider or more and in one or more stages
- The risks of detection associated with the route (i.e. likelihood of being discovered by police/coastguards/border police)
- The time of year and weather conditions
- In some cases, the nationality of the migrant.

The following example illustrates how fees may vary according to the route taken.

Case study: variation in fees according to the destination country

A man from a country in the Middle East recounted the following: *When I entered the shop in the town there were a few boys and a woman sitting there. They offered me a cup of tea and then we talked a bit …*

Where do you want to go?

Europe

Of course. Everybody wants to go to Europe. But which country in Europe?

I do not know, somewhere where I can stay.

OK, at the moment we can offer you North America or one of two destination countries in Western Europe. But you have to be aware that it costs a lot of money. With us you pay a lot but you will get what you want. If the first time fails we will try again, but this time at our expense.

How much does it cost and how long do I have to wait?

The fee to North America is $10,000 and we can arrange everything within two or three weeks.

For one of the Western European countries, the fee is $8,000; this will also take two or three weeks. For the other, the fee is $7,000, but we can arrange everything within five days.

OK, I will go to the second Western European country.

The following assumptions may be made about fees paid by migrants to smugglers:

- The further the distance between the country of origin and the country of destination, the higher the fee
- Higher risk involves higher cost
- Land routes often require several stopovers, each of which represents a risk of detection. Clandestine travel (by foot, car, lorry or train) is likely to be more dangerous and in many cases is life-threatening
- Journeys by air direct from the country of origin to the country of destination are safer, more convenient and of shorter duration and therefore more expensive than longer, more dangerous journeys via land and/or sea
- The more sophisticated the smuggling operation, the higher the fee.

Raising the fee to be smuggled

In many cases, migrants seeking to be smuggled must either sell their property (land or chattel) to raise the necessary money or, more commonly, obtain some form of credit. They often borrow from friends, relatives or even loan sharks; some take out bank loans.

Migrants who incur large debts in paying to be smuggled find themselves under great pressure to make enough money to settle those debts. Indebtedness to a smuggler who has offered to cover the cost of smuggling on condition of repayment renders the migrant extremely vulnerable to exploitation, trafficking or debt bondage.

Profits

It is difficult to estimate the profit that smugglers make from their criminal activities, for the following reasons:

- Proceeds from illicit activities are usually laundered and therefore become indistinguishable from legitimate profits
- Attempts to estimate the profits of the smuggling business vary widely, depending on such factors as the type and range of activities covered by the payment, the distance travelled, the nature of the risks and the countries involved
- Payments do not always take place in a single transaction, which makes it difficult to calculate overall fees and profits.

The following assumptions may be made about the nature of the profits made:

- The further the distance between the country of origin and the country of destination, the higher the fee
- The more sophisticated the smuggling operation, the higher the fee.

Case study: smuggling of migrants by sea

Small, flexible smuggling businesses were established in Albania. By the end of the 1990s, between 150 and 300 people per night could be transported from Albania to Italy. It was estimated that

about 50 rubber dinghies were used by those businesses in 1999. The dinghies were about 10 metres long and were completely emptied for the purpose of transporting illegal migrants. Some were equipped with two engines. Each craft carried 15 to 40 people in crouching position; the migrants were concealed under a canvas sheet. The dinghies would set out together at night, travelling in formation so as to be able to offer mutual assistance if necessary. They would then fan out as they approached Italian territorial waters, using the lighthouses as their points of reference.

The fee for the journey was variable: $400 to $450 for those paying the boat owner directly and $600 to $650 for those who used the services of a middleman. The annual turnover of the smuggling businesses in 2000 was estimated to be between $30 million and $60 million.

Recommended resources

For information on financial investigations relating to the smuggling of migrants, see Tool 7, subsection 7.7.

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and migrant smugglers in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving law enforcement and prosecution experts from several regions of the world.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

2.7 Smuggling of migrants by land

Migration is often a lengthy and complicated process comprising a number of stages. Each stage can involve several days or even weeks of travel through several different countries; some of those stages are organized locally by people who know the area. Migrants not travelling as part of a group may rely on contacts abroad for assistance and rarely pay a single sum for the entire journey.

In some cases, journeys require a desert crossing. Migrants may attempt to reach the desert alone or pay for all-inclusive transportation services, which are available in most major cities. In many cities, it is easy to arrange long journeys by minibus from one country to another. Travel by private minibus is always paid in advance; some passengers make the necessary arrangements with transporters by e-mail or by telephone prior to departure.

The second step is the desert crossing itself, which is very difficult and dangerous. At this stage, almost all migrants must establish contact with middlemen in order to continue the journey with drivers who know the routes and are able to avoid detection. They are forced to rely both on the smugglers who arrange the journey and on the drivers of the vehicles in which they are transported for several days, usually passing through several hubs.

In many cases, large lorries are used to transport up to 160 people between hubs; in others, minibuses are used to carry 25-30 people, but at greater expense. Payments to corrupt officials at the border are routine. Migrants often speak of their journey across the desert as being the most dangerous part of their odyssey; the travellers may encounter not only natural dangers but also well-organized groups of bandits.

Migrants are often left outside hubs by smugglers who fear detection. Migrants travelling without smugglers may hide for several days while looking for smugglers to take them to their desired destination; the waiting time can be very long. They may be introduced to smugglers by drivers who brought them to the hub or may find smugglers without help. If they need to save money to finance their onward travel, they may remain at the hub for several months, or even years.

Migrants often lodge in groups with fellow nationals who are already integrated into the local community and who may be able to help them in finding a job or contacts to facilitate onward travel. Groups are formed on the basis of ethnolinguistic affinities and are often controlled by a group leader who forbids newcomers from having contact with persons outside the group. In some cases, migrants live in camps of several hundred people, where they lack facilities and resources and the threat of violence from criminal organizations and of police raids is constant. In many such cases, the migrants have no choice but to accept jobs in which they are exploited.

Once the migrant succeeds in arranging onward travel, he or she may be brought by car, truck or on foot to a pickup point, usually late at night. At such pickup points, groups of

25-45 migrants are placed in an open-back truck which may be part of a two- or three-truck convoy that drives across the desert, a journey that takes around 10 days. There are often delays during the journey, caused by vehicle breakdowns, exhaustion of fuel supplies, waits for additional passengers or driver errors. Passengers may run out of basic food provisions and water as a result of such delays. Some passengers fall from the truck, but the drivers do not always stop to pick them up again. In some cases, desert crossings are completed entirely on foot. Smugglers may direct migrants for only part of the journey, abandoning them along the way.

Recommended resources

Mghari, Mohamed. *L'immigration subsaharienne au Maroc*. CARIM Analytic and Synthetic Notes 2008/77, Irregular Migration Series. San Domenico di Fiesole: European University Institute, 2008. Available from http://cadmus.iue.it/dspace/bitstream/1814/10510/1/CARIM_AS%26N_2008_77.pdf.

United Nations Office on Drugs and Crime. *Issue Paper: A short introduction to migrant smuggling*. Vienna, 2010.

This succinct issue paper offers an overview of what constitutes the smuggling of migrants and related conduct and gives practical examples of such smuggling.

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations Office on Drugs and Crime. *Smuggling of Migrants Into, Through and From North Africa: A Thematic Review and Annotated Bibliography of Recent Publications.*

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *The smuggling of migrants from a global perspective: a thematic review.*

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

2.8 Smuggling of migrants by sea

"There were three boats, each boat carried around 25 people. As the boat moved off, we began singing gospel music to keep our spirits up. It helped us not to think about the danger. After many hours, lots of us, including me, were vomiting. One girl who had been vomiting severely died. I can't say what happened to her body. I try never to think about it.

"After many hours of this, a big wave came and covered the boat. Everyone was shouting, water was pouring into the boat. I thought we were dead. We were all crying, we had no idea which direction we were going in or which direction we had come from. Everyone was panicking but then the engine suddenly started again. We all worked hard to bail out the water and we continued the journey. We were at sea for another three or four hours. I remember thinking it felt like the ocean kept opening up, swallowing our boat and spitting it back out again. We were rescued by the police as we neared the coastline. Moments after they picked us all up, our boat broke in two. If we had not been rescued, we would certainly have died at sea. The other two boats disappeared. To this day I don't know what happened to them."

Morgan, a survivor of smuggling by sea

Source: BBC, 12 September 2006.

One of the most dangerous forms of smuggling of migrants is by sea. Thousands of illegal migrants have lost their lives at sea. According to the International Maritime Organization (IMO), the total number of incidents related to unsafe practices associated with the trafficking or transport of migrants by sea reported from 1 January 1999 to 31 December 2008 was 1,667, those incidents involving 61,413 migrants.[2]

Case study: smuggling of migrants across the Mediterranean*

In the past, migrants would attempt perilous sea crossings alone. Slowly, smugglers created a market for their services and recruited professional sailors to transport migrants across oceans. Smugglers then began to send boats across seas, often without professional sailors.

Migrants arrive at coastal departure points or hubs independently or with the assistance of smugglers. From there, arrangements are made with maritime smugglers, perhaps in bars or market places in port towns or their outskirts. Whereas smugglers once used to sell single crossings to migrants, some now offer full "packages" that include assistance upon arrival in the destination country; in many cases half the fee for such a package is paid upfront, the remaining half being paid by relatives of the migrant in the destination country once the migrant's safe arrival is

[2] International Maritime Organization. Document MSC.3/Circ.16, 3 February 2009. Available from www.imo.org/Circulars/mainframe.asp?topic_id=397.

confirmed. In some cases, the full fee is paid in advance; in such cases, the smuggler may have less incentive to ensure that the migrant arrives safely to his or her destination.

Once a deal has been made between a migrant and a smuggler, the migrant is usually transported to a place where he or she must wait until the day of departure. There have been reports of migrants crowded into houses in the countryside for days or weeks, sometimes with armed guards to keep them in order while they wait for passage.

In some countries, when the time for departure arrives, the migrants are transported to the site of embarkation at night in small buses which have been emptied of their seats so as to increase their capacity. The passengers are then loaded on to small boats or transferred to fishing boats waiting at anchor, or are taken directly on board at small ports.

Crossing the sea is a perilous journey. Vessels are generally driven by migrants themselves who have no experience of seafaring or navigating. Often the migrant who takes responsibility for sailing the boat will be allowed to make the crossing without payment. Some are provided with a compass or a Global Positioning System device, but many have nothing with which to navigate.

The boats sail without a flag, a name or any kind of documentation. The owners of the boats remain unidentified and thus at no risk of investigation. The risk of shipwreck is very high; in some cases the boats are not even supplied with enough fuel to make the journey. The smugglers rely on the boats being rescued by authorities and sometimes send several boats at the same time with the aim of overcrowding reception centres so that migrants are moved to other locations immediately.

* United Nations Office on Drugs and Crime. *Smuggling of Migrants Into, Through and From North Africa: A Thematic Review and Annotated Bibliography of Recent Publications*. This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

To learn about cooperation and assistance in response to the smuggling of migrants by sea, go to Tool 6, subsection 6.11.

Recommended resources

Fortress Europe (www.fortresseurope.blogspot.com) reports that at least 14,798 people have died since 1988 along the European frontiers. Of that number, 6,417 went missing at sea. A total of 10,817 migrants died in the Mediterranean and Atlantic while travelling towards Spain. In the Sicily Channel, 4,178 people died while travelling along routes from Libya, Egypt and Tunisia to Malta and Italy, and 3,056 went missing; 138 more drowned while sailing from Algeria to Sardinia. Along routes from Mauritania, Morocco and Algeria towards Spain, through the Gibraltar Strait or off the Canary Islands, at least 4,446 people died and 2,254 went missing. A total of 1,315 people died in the Aegean Sea between Turkey and Greece or between Egypt and Greece, while 823 went missing; 603 people died and 220 went missing in the Adriatic Sea between Albania, Montenegro and Italy. At least 624 people were drowned trying to reach the French island of Mayotte in the Indian Ocean. The sea is not only

crossed aboard makeshift boats. 153 men who had been sailing as stowaways on registered ferries and cargo vessels died from asphyxiation or drowned.

International Maritime Organization. *Incident reports of unsafe practices of smuggling of migrants by sea.* Available from www.imo.org/Circulars/mainframe.asp?topic_id=397.

Monzini, Paola. Sea-Border Crossings: The Organization of Irregular Migration to Italy. *Mediterranean Politics*, vol. 12, No. 2 (2007).

The arrival of rotting boats crowded with hundreds of individuals exhausted by a difficult crossing in wretched conditions is a powerful image too often seen in the Italian newspapers. In the majority of cases, the sea crossing is only a small part of a long and eventful journey. The cross-Mediterranean flow of migrants without papers originates on the southern and eastern shores of the Mediterranean Sea, but it includes migration from several continents. Many Mediterranean countries have become transit routes as the main objective of the sea journey is to cross the most protected border, that of the Schengen area. In these countries, migrants become clients of illegal organizations; they pay for a service and subject themselves to rough treatment, with high risk for their personal safety. This article reconstructs the routes and the organization of the travels which irregularly cross the Mediterranean Sea to reach Italy. Different migration flows and their evolution are presented: the case of short crossings from Albania at the beginning of the 1990s; the departures from Turkey, Syria and Lebanon at the end of the 1990s; the passage from the Suez Canal; the long-distance journeys from West Africa; and finally the landings in Lampedusa from Libya, which is currently the most favoured route. Focus is placed on the organizations that run the illegal entry routes and on the institutional reactions at play to stop these irregular movements, considering both the Italian and the international perspectives.

www.informaworld.com/smpp/ftinterface~content=a779512721~fulltext=713240930

Office of the United Nations High Commissioner for Refugees. I*rregular Migration by Sea: Frequently Asked Questions.*

www.unhcr.org/4a1e48f66.html

2.9 Smuggling of migrants by air

The modus operandi used by migrant smugglers is adapted to each route and to the circumstances of each smuggling operation; highly sophisticated and often expensive methods are used to circumvent efforts to detect and intercept them. One of the most expensive and sophisticated methods employed by smugglers is air travel, which is much safer than journeys by land or sea. Little research has been carried out on the smuggling of migrants by air since smuggled migrants frequently pass through border controls unnoticed.

The smuggling of migrants by air reaps millions of dollars in profit for the criminals involved in such smuggling. Routes are often circuitous, passing through several different airports on different continents. Smugglers use falsified documents or documents that have been obtained fraudulently and bribe officials en route. The sophistication and transnational nature of this modus operandi highlight the need for a comprehensive response to it. However, there is insufficient information to formulate an appropriate response.

Several actors may be involved in the smuggling of migrants by air. Typically, the migrant initially liaises with an "agent" (sometimes a real travel agent), who is the first point of contact in the smuggling network. Coordinators in both the country of origin and the country of destination liaise between the parties, often with the help of an intermediary.

Another person may be required to supply a fake or falsified passport. Forgers may also be involved in providing falsified visas. Other actors may be involved in providing lookalike passports to be used by migrants who look like the person whose photo is on the passport.

Other key actors in the smuggling process are persons who, for a price, turn a blind eye to the smuggling operation or actively facilitate it. Such persons may be airline check-in staff, immigration authorities or airport staff.

Other actors involved in the smuggling of migrants by air include persons who provide ad hoc services along the route, such as accommodation and local transportation at transit points. Money brokers may also facilitate financial transactions between the actors at any stage of the process.

Case study

In 2007, police in the United Kingdom uncovered a scam whereby thousands of Indian nationals were brought to the United Kingdom using fake South African passports. First, the Indian nationals would travel by air to South Africa using their legitimate passports. Once there, they would be given fake South African passports and ID cards, obtained through a corrupt official the gang had bought off.

The migrants would then travel largely by air to the United Kingdom, where no visa was needed for South African nationals. Once in the United Kingdom, they would register with a college or in some instances marry in order to obtain leave to stay longer, before eventually disappearing off the radar altogether.

For some—as many as a quarter of those arriving in the United Kingdom—the journey did not end in Britain. They would pay the gang for a new, fake British passport to travel on to their final destination—the United States of America or Canada. "Facilitators" would make travel arrangements and, on occasion, would travel with those being smuggled.

Police who searched the room of one of the "facilitators" in South Africa found a diary listing hundreds of real names, false identities and payment records.

As the police continued to monitor them, that gang found ever more circuitous routes to get people into the country. One man was flown from Johannesburg to Doha in Qatar, then on to Switzerland and from there to Dublin. He travelled to Belfast, where he caught a ferry to Stranrear (United Kingdom), where he was arrested.

It is impossible to say how many people the gang transported in total. Detectives admit that as this gang is dismantled, it is likely another will begin an operation to bring more people into Britain.

Source: BBC, 22 January 2008.

Case study: "Club class" migrant smuggling

The mastermind of a people-smuggling racket which provided a "club class" service to migrants has been jailed for ten years. Turkish nationals were flown on a six-seater plane with a leather interior to small airstrips where there were no passport controls. The pilot involved in the operation was paid £1,000 per "customer".

Source: London Evening Standard, 19 December 2006.

In a similar case, migrants paid a sum for a complete package including forged passports and visas and the smugglers arranged for the migrants to pose as tourists and fly to a transit country. Once in the transit country, the migrants used forged papers and domestic airlines or ferries to enter the destination country.

Recommended resources

Human Rights Watch. *Lost in Transit: Insufficient Protection for Unaccompanied Migrant Children at Roissy Charles de Gaulle Airport*. New York, 2009.

www.hrw.org/en/node/86211

International Centre for Migration Policy Development. *2007 Yearbook on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe: A Survey and Analysis of Border Management and Border Apprehension Data from 20 States*. Vienna, 2008.

This document includes a special survey on illegal migration by air.

www.icmpd.org/807.html?&tx_icmpd_pi2%5Bdocument%5D=587&cHash=67946757c8

United Nations Office on Drugs and Crime. *Issue Paper: Migrant smuggling by air*. Vienna, 2010.

www.unodc.org/unodc/en/human-trafficking/publications.html

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Tool 3

International legal framework

3

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Contents

Overview 1

3.1 Introduction to international insturments againt transnational organized crime . 2

3.2 Relationship between the Organized Crime Convention and the Smuggling of Migrants Protocol 5

3.3 Ratification of the Smuggling of Migrants Protocol 7

3.4 Other relevant international instruments 9

3.5 Regional instruments 15

Overview

There are several international instruments that provide the international framework for responding to the smuggling of migrants. Tool 3, entitled "International legal framework", is divided as follows:

3.1 offers an introduction to the international instruments against transnational organized crime, namely, the United Nations Convention against Transnational Organized Crime (Organized Crime Convention) and its supplementary Protocols on Trafficking in Persons and Smuggling of Migrants;

3.2 explains the relationship between the Organized Crime Convention and the Smuggling of Migrants Protocol;

3.3 offers guidance on steps that both Governments and civil society can take to facilitate the ratification of the Smuggling of Migrants Protocol;

3.4 describes other international instruments that can help combat the smuggling of migrants;

3.5 provides a non-exhaustive list of regional instruments.

3.1 Introduction to international instruments against transnational organized crime

The international legal framework within which States must define their own laws in order to effectively address the problem of the smuggling of migrants comprises conventions and instruments of the United Nations and other international organizations. These instruments also provide a framework for States to collaborate with each other to prevent and combat the smuggling of migrants.

International cooperation is a basic condition for the success of any response to the smuggling of migrants. For more information on international cooperation, see Tool 6. The smuggling of migrants takes place across borders and cannot be addressed without joint international efforts and international cooperation.

A growing number of bilateral, regional and global agreements reflect the increasing recognition that transnational crime must be addressed through international cooperation. As criminal groups operate across borders, judicial systems must do the same.

The most relevant international instruments with regard to combating the smuggling of migrants are:

- The United Nations Convention against Transnational Organized Crime (Organized Crime Convention)
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol)
- The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Smuggling of Migrants Protocol)

States that are serious about combating the problem of the smuggling of migrants will find that it is to their advantage to ratify and implement the Organized Crime Convention, the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol.

Organized Crime Convention

The Organized Crime Convention establishes general measures against transnational organized crime, while its Protocols focus on specific crimes. Each Protocol must be read and applied in conjunction with the Convention. The Convention applies to the two Protocols mutatis mutandis (that is, with such modification as the case requires) and all offences established by the Protocols are also considered offences under the Convention itself.

The Organized Crime Convention and the Protocols thereto establish minimum standards; States parties are bound to adhere to these minimum standards, but may adopt stricter measures.

The Organized Crime Convention and the Smuggling of Migrants Protocol enable States to tackle the crime of the smuggling of migrants in a comprehensive manner. This is important because smuggling operations are often only one part of criminal activities. The groups involved in the smuggling of migrants also tend to engage in other illicit activities, such as trafficking in persons, drugs, weapons or other illicit commodities, corruption, or money-laundering.

The Organized Crime Convention facilitates the investigation and prosecution of all these criminal activities in a comprehensive, cross-border manner. For example, it may be possible in some instances to prosecute someone involved in the smuggling of migrants for the offence of participating in the activities of an organized criminal group, even if there is not enough evidence to prosecute that person for the offence of smuggling of migrants itself.

The Convention is the international community's response to the need for a truly global approach. Its purpose is to promote cooperation to prevent and combat transnational organized crime more effectively (article 1 of the Convention). It seeks to increase the number of States that take effective measures against transnational organized crime and to build and strengthen international cooperation. It respects the differences and specificities of legal traditions and cultures, while at the same time promoting a common language and helping to remove some of the existing barriers to effective transnational collaboration.

The Convention covers offences that form part of the profit-making activities of organized criminal groups; its supplementary Protocols target specific types of organized criminal activity that require specialized provisions.

Smuggling of Migrants Protocol

The Smuggling of Migrants Protocol has three purposes, which are set out in its article 2:

- To prevent and combat the smuggling of migrants
- To promote cooperation among States parties to that end
- To protect the rights of smuggled migrants

In addition to setting out specific requirements for extradition, mutual legal assistance and forms of international cooperation, the Convention and the two Protocols set standards on both substantive and procedural law in order to assist States parties in harmonizing their legislation and eliminating differences that can hamper prompt and effective international cooperation.

Recommended resources

Organized Crime Convention and Smuggling of Migrants Protocol

The texts of the Organized Crime Convention and of the Smuggling of Migrants Protocol are available from www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*. (Sales No. E.05.V.2.)

The main purpose of these Legislative Guides is to assist States seeking to ratify or implement the Organized Crime Convention and its supplementary Protocols. The Guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The Guides have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations. *Travaux préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.* (Sales No. E.06.V.5.)

The *travaux préparatoires* (official records) of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto are intended to provide a better, more in-depth understanding of the Convention and its Protocols. The publication tracks the progress of the negotiations in the open-ended intergovernmental Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, which was established by the General Assembly in its resolution 53/111, with terms of reference supplemented by the Assembly in its resolution 53/114, and requested to finalize the draft texts and submit them directly to the Assembly for adoption (resolution 54/126).

www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html

Other relevant instruments

For other relevant international instruments, see subsection 3.4.

For other relevant regional instruments, see subsection 3.5.

3.2 Relationship between the Organized Crime Convention and the Smuggling of Migrants Protocol

The smuggling of migrants is carried out across borders and cannot be addressed without joint international efforts and international cooperation.

It is important that all States wanting to work together to combat the smuggling of migrants become parties to the Organized Crime Convention and the Smuggling of Migrants Protocol.

Article 1 of the Smuggling of Migrants Protocol and article 37 of the Organized Crime Convention establish the following basic principles governing the relationship between the two instruments:

No State can be a party to the Protocol unless it is also a party to the Convention

- Simultaneous ratification or accession is permitted, but a State is not subject to any obligation under the Protocol unless it is also subject to the obligations of the Convention.

The Convention and the Protocol must be interpreted together

- In interpreting the various instruments, all relevant instruments should be considered and provisions using similar or parallel language should be given generally similar meaning.
- In interpreting a Protocol, the purpose of that Protocol must also be considered, which may modify meanings applied to the Convention in some cases.
- The provisions of a particular Protocol are binding on States parties only if they are parties to that Protocol.

The provisions of the Convention apply to the Protocol, mutatis mutandis

- In applying provisions of the Convention to the Protocol, minor modifications of interpretation or application can be made to take account of the circumstances that arise under the Protocol, but modifications should not be made unless required, and then only to the extent necessary.
- This general rule does not apply where a Protocol specifically excludes it.

Offences established under the Protocol will also be regarded as offences established in accordance with the Convention

- This principle, which is comparable in certain respects to the mutatis mutandis requirement, is a critical link between the Protocol and Convention. It ensures that any offence or offences established by a State in order to criminalize the smuggling of migrants, as required by article 6 of the Smuggling of Migrants Protocol, will

automatically be included within the scope of the basic Convention provisions governing forms of international cooperation, such as extradition (article 16 of the Convention) and mutual legal assistance (article 18 of the Convention).

- This principle also links the Protocol and Convention by making other mandatory provisions of the Convention applicable to offences under the Protocol. In particular, obligations under article 6 (criminalization of the laundering of proceeds of crime), article 10 (liability of legal persons), article 11 (prosecution, adjudication and sanctions), articles 12 to 14 (confiscation), article 15 (jurisdiction), article 16 (extradition), article 18 (mutual legal assistance), article 20 (special investigative techniques), article 23 (criminalization of obstruction of justice), articles 24 to 26 (witness and victim protection and assistance, and enhancement of cooperation with law enforcement authorities), article 27 (law enforcement cooperation), articles 29 and 30 (training, technical assistance and economic development) and article 34 (implementation of the Convention) apply equally to the offences established under the Protocol. Establishing a similar link is therefore an important element of domestic legislation to implement the Protocol.

Recommended resources

Organized Crime Convention and the Protocols thereto

The texts of the Organized Crime Convention and of its Protocols, as well as other relevant information, are available on the UNODC website at www.unodc.org/unodc/en/treaties/CTOC/index.html.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto*. (Sales No. E.05.V.2.)

(Available from www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html.)

3.3 Ratification of the Smuggling of Migrants Protocol

The United Nations Children's Fund (UNICEF) Regional Office for South Asia has released an information kit containing advice on what Governments and civil society can do both before and after ratification of the Trafficking in Persons Protocol. The advice it offers is equally applicable to the ratification of the Smuggling of Migrants Protocol and has been adapted accordingly below.

Pre-ratification

What Governments can do:

- Support consultations with civil society for discussion on the policy and programmatic implications of the Protocol
- Consult with other Governments on ratification processes
- Initiate the ratification process
- Follow existing national laws and regulations to carry out the ratification process

What civil society can do:

- Educate key stakeholders on the Protocol
- Develop and disseminate advocacy materials about the Protocol
- Conduct seminars/conferences promoting ratification of the Protocol
- Use mass media to provide extensive coverage of the Protocol and its significance

Post-ratification

What Governments can do:

- Translate the Protocol into national languages
- Disseminate the Protocol widely to all relevant Government agencies
- Amend inconsistent domestic legislation on the smuggling of migrants in accordance with the Protocol
- Enact new laws to complement the Protocol
- Provide training to people working in the criminal justice system on the smuggling of migrants and related issues
- Develop a national plan of action against the smuggling of migrants that is consistent with the Protocol
- Develop programmes necessary for the implementation of the Protocol and national plan of action

- Establish agreements with other Governments to prevent cross-border smuggling of migrants
- Implement a monitoring system
- Implement prevention programmes among potential risk groups
- Develop guidelines for effective reintegration programmes
- Create infrastructures and strengthen institutional mechanisms for the implementation of the Protocol
- Promote cooperation with other Governments by initiating bilateral or multilateral agreements that facilitate the implementation of the Protocol
- Develop partnerships with non-governmental organizations/international non-governmental organizations working to combat the smuggling of migrants for the effective implementation of the Protocol
- Monitor the implementation of the Protocol

What civil society can do:

- Raise awareness at the grass-roots and national levels of the smuggling of migrants, its causes and consequences, and the role of the Protocol as a tool to address the issue
- Cooperate with Governments to rehabilitate and reintegrate migrants who have been smuggled
- Collect data and conduct research to inform policies and programmes
- Conduct intensive awareness-raising campaigns against the smuggling of migrants at the local and national levels to encourage action by different groups
- Launch income-generating programmes in areas where people are vulnerable to becoming victims of migrant smugglers
- Link the Protocol with other human rights instruments
- Advise on the rights established by the Protocol
- Initiate amendment proposals to address gaps in the Protocol
- Raise violations of rights under the Protocol during reporting to relevant international instruments

Source: The United Nations Children's Fund Regional Office for South Asia, *Information Kit*, available from www.unicef.org/rosa/InfoKit.pdf.

3.4 Other relevant international instruments

International migration instruments

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families General Assembly resolution 45/158 www2.ohchr.org/english/law/cmw.htm

The Convention entered into force on 1 July 2003. Article 68 is relevant to smuggling of migrants and related crimes:

Article 68

1. States Parties, including States of transit, shall collaborate with a view to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation. The measures to be taken to this end within the jurisdiction of each State concerned shall include:

(a) Appropriate measures against the dissemination of misleading information relating to emigration and immigration;

(b) Measures to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose effective sanctions on persons, groups or entities which organize, operate or assist in organizing or operating such movements;

(c) Measures to impose effective sanctions on persons, groups or entities which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation.

2. States of employment shall take all adequate and effective measures to eliminate employment in their territory of migrant workers in an irregular situation, including, whenever appropriate, sanctions on employers of such workers. The rights of migrant workers vis-à-vis their employer arising from employment shall not be impaired by these measures.

- Convention concerning Migration for Employment (Revised), 1949 (Convention No. 97), of the International Labour Organization
  United Nations, *Treaty Series,* vol. 120, No. 1616
  www.ilo.org/ilolex/cgi-lex/convde.pl?C097
- Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (Convention No. 143), of the International Labour Organization
  United Nations, *Treaty Series*, vol. 1120, No. 17426
  www.ilo.org/ilolex/cgi-lex/convde.pl?C143

- Convention concerning the Repatriation of Seafarers (Revised), 1987 (Convention No. 166), of the International Labour Organization United Nations, *Treaty Series*, vol. 1644, No. 28256 www.ilo.org/ilolex/cgi-lex/convde.pl?C166
- Convention concerning Private Employment Agencies, 1997 (Convention No. 181), of the International Labour Organization United Nations, *Treaty Series*, vol. 2115, No. 36794 www.ilo.org/ilolex/cgi-lex/convde.pl?C181
- Recommendation concerning Cooperation between States relating to the Recruitment, Placing and Conditions of Labour of Migrants for Employment, 1939 (Recommendation No. 62), of the International Labour Organization www.ilo.org/ilolex/cgi-lex/convde.pl?R062
- Recommendation concerning Migrant Workers, 1975 (Recommendation No. 151), of the International Labour Organization www.ilo.org/ilolex/cgi-lex/convde.pl?R151
- Recommendation concerning the Protection of Migrant Workers in Underdeveloped Countries and Territories, 1955 (Recommendation No. 100), of the International Labour Organization www.ilo.org/ilolex/cgi-lex/convde.pl?R100
- Recommendation concerning the Repatriation of Seafarers, 1987 (Recommendation No. 174), of the International Labour Organization www.ilo.org/ilolex/cgi-lex/convde.pl?R174

International labour instruments

- Convention concerning Forced or Compulsory Labour, 1930 (Convention No. 29), of the International Labour Organization United Nations, *Treaty Series*, vol. 39, No. 612 www.ilo.org/ilolex/cgi-lex/convde.pl?C029
- Convention concerning the Abolition of Forced Labour, 1957 (Convention No. 105), of the International Labour Organization United Nations, *Treaty Series*, vol. 320, No. 4648 www.ilo.org/ilolex/cgi-lex/convde.pl?C105
- Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Convention No. 182), of the International Labour Organization United Nations, *Treaty Series*, vol. 2133, No. 37245 www.ilo.org/ilolex/cgi-lex/convde.pl?C182
- Convention concerning Minimum Age for Admission to Employment, 1973 (Convention No. 138), of the International Labour Organization United Nations, *Treaty Series*, vol. 1015, No. 14862 www.ilo.org/ilolex/cgi-lex/convde.pl?C138
- Convention concerning the Protection of Wages, 1949 (Convention No. 95), of the International Labour Organization United Nations, *Treaty Series*, vol. 138, No. 1871 www.ilo.org/ilolex/cgi-lex/convde.pl?C095

- Convention concerning Basic Aims and Standards of Social Policy, 1962 (Convention No. 117), of the International Labour Organization
  United Nations, *Treaty Series*, vol. 494, No. 7237
  www.ilo.org/ilolex/cgi-lex/convde.pl?C117

- Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries, 1970
  (Convention No. 131), of the International Labour Organization
  United Nations, *Treaty Series*, vol. 825, No. 11821
  www.ilo.org/ilolex/cgi-lex/convde.pl?C131

- Recommendation concerning Minimum Wage Fixing, with Special Reference to Developing Countries, 1970 (Recommendation No. 135), of the International Labour Organization
  www.ilo.org/ilolex/cgi-lex/convde.pl?R135

International gender-specific instrument

- Convention on the Elimination of All Forms of Discrimination against Women
  United Nations, *Treaty Series*, vol. 1249, No. 20378
  www.un-documents.net/cedaw.htm

International child-specific instruments

- Convention concerning Minimum Age for Admission to Employment, 1973 (Convention No. 138), of the International Labour Organization
  United Nations, *Treaty Series*, vol. 1015, No. 14862
  www.ilo.org/ilolex/cgi-lex/convde.pl?C138

- Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999
  (Convention No. 182), of the International Labour Organization
  United Nations, *Treaty Series*, vol. 2133, No. 37245
  www.ilo.org/ilolex/cgi-lex/convde.pl?C182

- Convention on the Rights of the Child
  United Nations, *Treaty Series*, vol. 1577, No. 27531
  www2.ohchr.org/english/law/crc.htm

- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
  United Nations, *Treaty Series*, vol. 2171, No. 27531
  www2.ohchr.org/english/law/crc-sale.htm

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
  United Nations, *Treaty Series*, vol. 2173, No. 27531
  www2.ohchr.org/english/law/crc-conflict.htm

- Recommendation concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999
  (Recommendation No. 190), of the International Labour Organization
  www.ilo.org/ilolex/cgi-lex/convde.pl?R190

- Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights
  A/CONF.157/24 (Part I), chap. III
  www2.ohchr.org/english/law/pdf/vienna.pdf

International human rights instruments

- Convention concerning Forced or Compulsory Labour, 1930 (Convention No. 29), of the International Labour Organization
  United Nations, *Treaty Series*, vol. 39, No. 612
  www.ilo.org/ilolex/cgi-lex/convde.pl?C029
- Convention on the Elimination of All Forms of Discrimination against Women
  United Nations, *Treaty Series*, vol. 1249, No. 20378
  www.un-documents.net/cedaw.htm
- International Covenant on Civil and Political Rights
  General Assembly resolution 2200 A (XXI), annex
  www2.ohchr.org/english/law/ccpr.htm
- International Covenant on Economic, Social and Cultural Rights
  General Assembly resolution 2200 A (XXI), annex
  www2.ohchr.org/english/law/cescr.htm
- International Convention on the Elimination of All Forms of Racial Discrimination
  United Nations, *Treaty Series*, vol. 660, No. 9464
  www2.ohchr.org/english/law/cerd.htm
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment United Nations, *Treaty Series*, vol. 1465, No. 24841
  www2.ohchr.org/english/law/cat.htm

International refugee and internally displaced persons instruments

- Convention relating to the Status of Refugees
  United Nations, *Treaty Series*, vol. 189, No. 2545
  www2.ohchr.org/english/law/refugees.htm
- Protocol relating to the Status of Refugees
  United Nations, *Treaty Series*, vol. 606, No. 8791
  www2.ohchr.org/english/law/protocolrefugees.htm
- Convention Governing the Specific Aspects of Refugee Problems in Africa
  African Union
  www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf
- Cartagena Declaration on Refugees
  Coloquio Sobre la Proteccíon Internacional de los Refugiados en América Central, México y Panamá: Problemas Jurídicos y Humanitarios (Colloquium on International Protection for Refugees in Central America, Mexico and Panama: Legal and Humanitarian Issues)
  www.asylumlaw.org/docs/international/CentralAmerica.PDF

International humanitarian law

- Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949
  United Nations, *Treaty Series*, vol. 75, No. 970
  www.icrc.org/ihl.nsf/FULL/365?OpenDocument
- Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949
  United Nations, *Treaty Series*, vol. 75, No. 971
  www.icrc.org/ihl.nsf/FULL/370?OpenDocument
- Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949
  United Nations, *Treaty Series*, vol. 75, No. 972
  www.icrc.org/ihl.nsf/FULL/375?OpenDocument
- Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949
  United Nations, *Treaty Series,* vol. 75, No. 973
  www.icrc.org/ihl.nsf/FULL/380?OpenDocument
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)
  United Nations, *Treaty Series*, vol. 1125, No. 17512
  www2.ohchr.org/english/law/protocol1.htm
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)
  United Nations, *Treaty Series*, vol. 1125, No. 17513
  www2.ohchr.org/english/law/protocol2.htm
- International Convention for the Protection of All Persons from Enforced Disappearances
  General Assembly resolution 61/177, annex
  www2.ohchr.org/english/law/disappearance-convention.htm

International development instruments

- Declaration on Social Progress and Development
  General Assembly resolution 2542 (XXIV)
  www2.ohchr.org/english/law/pdf/progress.pdf
- Declaration on the Right to Development
  General Assembly resolution 41/128
  www2.ohchr.org/english/law/pdf/rtd.pdf
- United Nations Millennium Declaration
  General Assembly resolution 55/2
  www.un.org/millennium/declaration/ares552e.pdf

International law of the sea

- United Nations Convention on the Law of the Sea
  United Nations, *Treaty Series*, vol. 1833, No. 31363
  www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm

Recommended resources

International Committee of the Red Cross. International Humanitarian Law Database.

This database provides documentation and commentaries concerning the implementation of international humanitarian law at the national level. The content is drawn from information available to the International Committee of the Red Cross Advisory Service on International Humanitarian Law and illustrates possible approaches to incorporating international humanitarian law into national legislation.

www.icrc.org/ihl-nat

International Committee of the Red Cross. Resources relating to missing persons and international humanitarian law.

www.icrc.org/web/eng/siteeng0.nsf/htmlall/section_ihl_missing_persons?OpenDocument#Key%20document

For an extensive list of international, regional and national instruments relating to migration, visit the International Migration Law Database of the International Organization for Migration at www.imldb.iom.int/section.do.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations Office for the Coordination of Humanitarian Affairs. *Guiding Principles on Internal Displacement*.

www.reliefweb.int/ocha_ol/pub/idp_gp/idp.html

3.5 Regional instruments

Regional migration instruments

- ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers
  Association of Southeast Asian Nations (ASEAN), 2007
  Signatories to the ASEAN Declaration are Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam. The ASEAN Declaration sets out obligations for both sending and receiving States and aims to strengthen the cooperation between them.
  www.aseansec.org/19264.htm

- Bangkok Declaration on Irregular/Undocumented Migration
  International symposium on migration, "Towards Regional Cooperation on Irregular/Undocumented Migration", 1999.
  This Declaration, made by ministers and governmental representatives of Asian and Pacific countries, calls for cooperation, information exchange, humane treatment of victims of trafficking and stronger criminalization of trafficking in persons.
  www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/policy_and_research/rcp/APC/BANGKOK_DECLARATION.pdf

- Draft resolution on prevention and eradication of commercial sexual exploitation and smuggling of and trafficking in minors
  Permanent Council of the Organization of American States, 2009
  scm.oas.org/IDMS/Redirectpage.aspx?class=cp/cg&classNum=1765&lang=e

- Paris Declaration on Migration and Development
  Second Euro-African Ministerial Conference on Migration and Development, 2008
  www.oecd.org/dataoecd/41/5/41912183.pdf

Regional human rights instruments

- African Charter on Human and Peoples' Rights
  www.hrcr.org/docs/Banjul/afrhr.html

- African Commission on Human and Peoples' Rights, Rules of Procedure
  www.hrcr.org/docs/African_Commission/afrcommrules.html

- American Convention on Human Rights
  www.hrcr.org/docs/American_Convention/oashr.html

- American Declaration of the Rights and Duties of Man
  www.hrcr.org/docs/OAS_Declaration/oasrights.html

- Arab Charter on Human Rights
  www1.umn.edu/humanrts/instree/loas2005.html
- Convention for the Protection of Human Rights and Fundamental Freedoms
  United Nations, *Treaty Series*, vol. 213, No. 2889
  http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm
- European Convention on the Legal Status of Migrant Workers
  Council of Europe, *European Treaty Series*, No. 93
  www.coe.int/t/dg3/migration/Documentation/Default_conv_en.asp
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
  Council of Europe, *European Treaty Series*, No. 126
  http://conventions.coe.int/Treaty/en/Treaties/Html/126.htm

Regional gender instruments

- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
  www.achpr.org/english/_info/women_en.html

Recommended resources

- For an extensive list of international, regional and national instruments relating to migration, visit the International Migration Law Database of the International Organization for Migration at www.imldb.iom.int/section.do.

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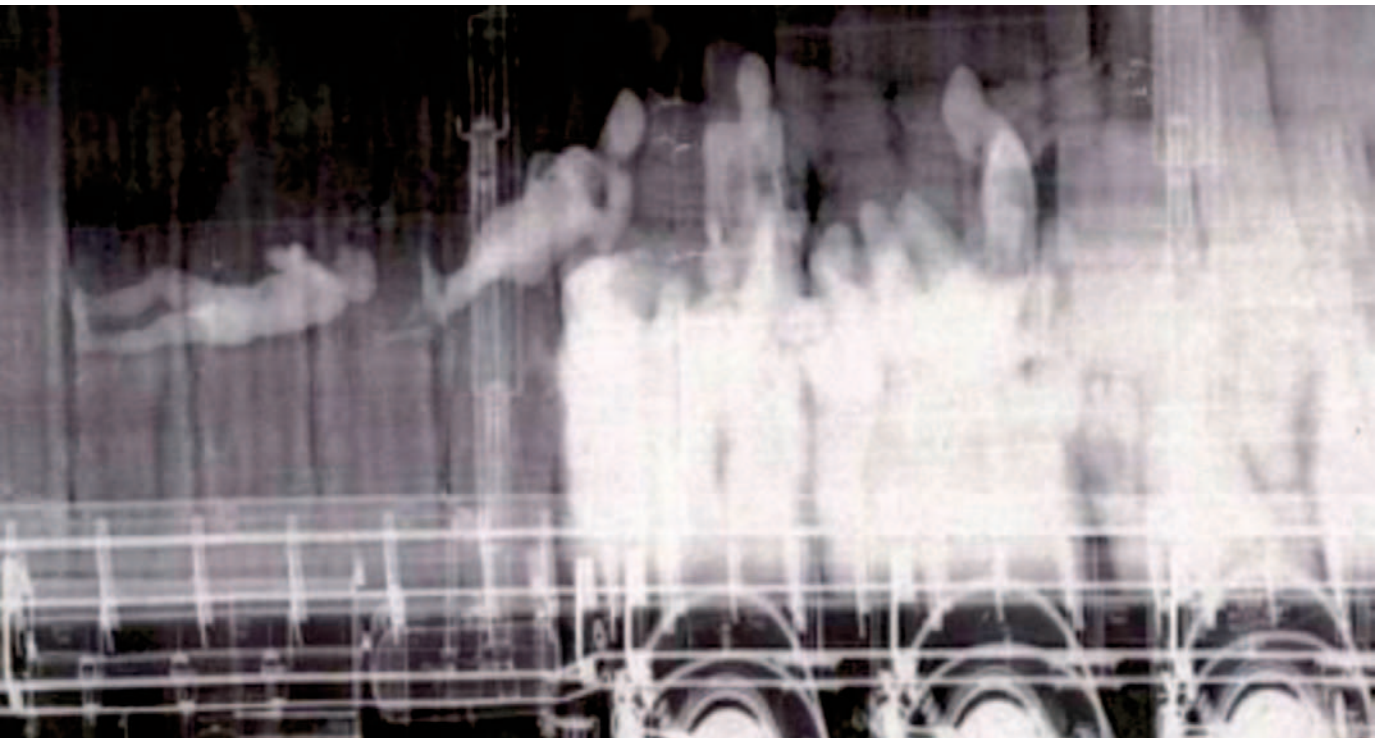

Toolkit to Combat Smuggling of Migrants

Tool 4

Problem assessment and strategy development

4

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UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Toolkit to Combat Smuggling of Migrants

Tool 4

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Contents

Overview 1

Problem assessment

4.1 General guidance for conducting assessments 2

4.2 Guidance on situation assessments 6

4.3 Guidance for conducting rapid needs assessments in conflict and post-conflict areas 18

4.4 Guidance for conducting assessments of the national response 21

4.5 Guidance on conducting legal framework assessments 27

4.6 Guidance for conducting criminal justice system assessments 29

Strategy development

4.7 Guiding principles for developing responses to the smuggling of migrants 35

4.8 Developing a multiagency approach to intervention 38

4.9 Developing inter-agency coordination mechanisms 42

Action plans and strategies

4.10 National action plans and strategies 43

4.11 Regional action plans and strategies 44

4.12 Interregional and international action plans and strategies 52

Coordination mechanisms and institutions

4.13 National coordination mechanisms and institutions 57

4.14 Regional coordination mechanisms and institutions 62

4.15 Interregional and international coordination mechanisms and institutions 67

Overview

A systematic process that reviews local circumstances is required in order to properly assess the situation of or response to the smuggling of migrants in a given area. The assessment should review the nature and extent of the problem and identify the agencies and groups involved in the protection and assistance given to intercepted migrants. Assessments should be conducted as a means of identifying needs and formulating response. Tool 4 is divided into four sections: "Problem assessment", "Strategy development", "Action plans and strategies", and "Coordination mechanisms and institutions". The four sections are subdivided as follows:

Problem assessment

4.1 offers some general guidelines on conducting assessments;

4.2 gives guidance on conducting assessments of smuggling of migrants situations;

4.3 offers some guidance on conducting rapid needs assessments in situations of sudden emergency;

4.4 provides guidance on conducting assessments of the national response to the smuggling of migrants and offers some examples of assessments that have been carried out;

4.5 offers guidance for assessing legal frameworks and gives relevant examples;

4.6 discusses assessments of the criminal justice system and provides some examples of such assessments.

Strategy development

4.7 offers some guiding principles for developing strategies to respond to the smuggling of migrants;

4.8 focuses on the development of multiagency approaches to intervention;

4.9 focuses on the development of inter-agency coordination mechanisms.

Action plans and strategies

4.10 showcases some national action plans and strategies;

4.11 gives examples of regional action plans and strategies;

4.12 sets out some interregional and international action plans and strategies.

Coordination mechanisms and institutions

4.13 offers some examples of national coordination mechanisms and institutions aimed at coordinating the response to the smuggling of migrants;

4.14 lists some regional coordination mechanisms;

4.15 cites examples of interregional and international coordination mechanisms and institutions.

Problem assessment

4.1 General guidance for conducting assessments

Assessment approach

Assessments should be considered a means of identifying needs.

- National governmental or non-governmental actors should initiate assessments and conduct them jointly with local Government and civil society actors. National authorities should also draw upon the expertise of research institutes.
- External actors can facilitate assessments, as they may be sensitive to local economic, social, cultural, civil and political circumstances.
- Findings should be openly shared with stakeholders for discussion.
- Clear frameworks and questionnaires should be developed before information is gathered.

Needs assessments should begin at the most basic level to consider such issues as:

- The extent to which Government agencies and non-governmental organizations are aware of the problem of the smuggling of migrants
- Whether there is legislation in place to address the smuggling of migrants and whether it is adequate
- Whether inter-agency agreements or guidelines have been initiated to build cooperation between Government agencies and non-governmental organizations
- The extent to which the Government is making funds available to combat the smuggling of migrants and assist smuggled migrants who may be victims of crime

Initial consultations with Government and non-governmental agencies should address:

- How the country perceives the smuggling of migrants and smuggled migrants
- What the country's general policies are in relation to irregular migration and related crimes such as trafficking in persons

Sources: Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights. *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook*. Warsaw, 2004. Available from www.osce.org/publications/odihr/2004/05/12351_131_en.pdf

United Nations Office on Drugs and Crime. *Criminal Justice Assessment Toolkit*. New York, 2006. Available from www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html

During the assessment

- Listen and respect your speaker. You are conducting the assessment to learn, not to lecture.
- Repeat your questions in different ways; there may be different answers.
- Remember that tools and checklists for conducting assessments are meant to assist you; reading a list of questions to an interviewee rather than engaging them in conversation may be counterproductive.
- Conduct interviews as privately as possible (with due regard for special situations, such as interviewing in a detention centre or prison).
- Ask to be shown how things work, rather than just listening to descriptions. Site visits and practical demonstrations reveal more than briefings.
- Ask people to show you what they do.
- Consider whether you are missing anything and ask yourself why that could be.
- Visit multiple locations when conducting site visits. Where possible, choose both urban and rural settings as well as settings where the socio-economic levels vary. What is relevant in a country's capital may not be applicable elsewhere.
- Wherever possible, corroborate information by consulting a wide range of sources (including, for example, United Nations agencies, local and international non-governmental organizations, academic institutions, donor countries, etc.).

Source: United Nations Office on Drugs and Crime. *Criminal Justice Assessment Toolkit.* New York, 2006. Available from www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html.

Recommended resources

United Nations Office on Drugs and Crime. *Criminal Justice Assessment Toolkit*. New York, 2006.

This Toolkit is a standardized and cross-referenced set of tools designed to enable United Nations agencies, Government officials engaged in criminal justice reform and other organizations and individuals to conduct comprehensive assessments of criminal justice systems; to identify areas of technical assistance; to assist agencies in the design of interventions that integrate United Nations standards and norms on crime prevention and criminal justice; and to assist in training on these issues. The Toolkit is a practical guide intended for use by those responsible for the assessment of criminal justice systems and the implementation of criminal justice reform.

It is available from www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html.

Bilger, Veronika, and Ilse van Liempt, eds. *The Ethics of Migration Research Methodology: Dealing with Vulnerable Immigrants*. Eastbourne: Sussex Academic Press, 2009.

The aim of this book is to present the difficulties that researchers working with migrants in precarious situations have to contend with, and to contribute to the development

of methodological and ethical discussions relevant to the topic of migration as an interdisciplinary field of research. This is done using a threefold approach: discussion of methods and ethics in institutional settings; rethinking basic research methods; and defining the role of the researcher.

Chapter 5 specifically addresses methodological and ethical issues in relation to undertaking research among smuggled migrants.

More information about this publication can be found at www.sussex-academic.co.uk/sa/titles/geography_environment/LiemptBilger.htm.

Literature surveys

Several studies have been conducted on patterns and trends in the smuggling of migrants throughout the world. The United Nations Office on Drugs and Crime (UNODC) has endeavoured to conduct a survey of that information by collating it in an accessible form. The result will be two freely available publications:

The smuggling of migrants from a global perspective: a thematic review

The purpose of this thematic review is to survey existing sources and research papers on the smuggling of migrants and to provide a gap analysis of the existing and missing evidence and knowledge on the smuggling of migrants from a global perspective, albeit primarily with regard to literature in English and French.

The overall objective of the report is to enhance concrete understanding of the increasing phenomenon of the smuggling of migrants by reviewing the information available about the scale of the phenomenon, characteristics of migrants, their motivations and smuggling trajectories, and the profile and modus operandi of smugglers. The review does not provide a detailed historical or legal analysis of the smuggling phenomenon, although conceptual challenges identified by the literature will be briefly analysed. The holistic approach taken by the author includes an impact assessment of anti-smuggling policies and reviews innovative concepts and proposals put forward by scholars and international organizations to stem this phenomenon. Such a practical approach is aimed at helping specialized agencies to establish effective programmes and to enhance the ability of decision makers to stem the smuggling of migrants in full compliance with international standards.

The second aim of the review is to highlight the need for further research on areas that have not been intensively researched yet, or where little material is available in English or French. Together with an annotated bibliography provided alongside the thematic review, the final report provides a list of main research centres, institutions and think tanks active in the field of smuggling of migrants. These practical tools will allow academics and researchers to further develop their activities.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

The Smuggling of Migrants Into, Through and From North Africa: A Thematic Review and Annotated Bibliography of Recent Publications

The aim of this publication is to contribute to increased understanding of the smuggling of migrants to, through and from North Africa, so as to facilitate the formulation of evidence-based policies on this issue.

It reviews literature that was published by academics, journalists, international organizations and non-governmental organizations. The literature was selected on the basis of thematic relevance, time and language: only publications in English, French and Italian were reviewed.

The review is structured into thematic chapters that review research publications with regard to the following topics:

- Quantifying irregular migration and smuggling of migrants in, from and through North Africa
- The geography of routes used to smuggle migrants
- Profile and characteristics of smuggled migrants
- Smuggler-migrant relationships
- Organizational structures of networks used to smuggle migrants
- The modus operandi of the groups involved in the smuggling of migrants
- Smuggling fees and profits
- The human and social costs of smuggling

Finally, this publication offers a summary of main findings, highlighting the challenges of researching the issue of the smuggling of migrants and the gaps in research. There is also an annotated bibliography of the reviewed literature.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

4.2 Guidance on situation assessments

The following list of questions are examples of the types of questions that can be asked when conducting an assessment on the situation of the smuggling of migrants in a given country, region or area. These questions listed below are suggestions only; any assessment questions should be tailored to the specific country being assessed, with regard to whether it is a country of origin, transit or destination (or a combination thereof).

Information on entry and exit points

- What are the main entry and exit points used by irregular migrants to enter and leave the country? Have there been any recent changes in that respect? Why could that be?
- Which are the country's main entry and exit points used by organized criminal groups for the smuggling of migrants? Have there been any recent changes in that respect? Why could that be?

Smuggled migrants

- Are there any estimates and trends on the extent to which smuggled migrants originate, transit through or are destined for the country?
- How many migrants are currently in the country with the aim of illegally migrating?
- What are the profiles of the smuggled migrants?
- What are the risks that smuggled migrants are exposed to during their journey?

Patterns of smuggling of migrants and involvement of organized crime

- What means of transportation do irregular migrants use during their journey?
- What is the estimated percentage of irregular migrants who use fraudulent travel and identity documents during their journey?
- Are there criminal groups involved in irregular migration in the country?
  - If so, who are these groups?
- What are the profiles of the persons who facilitate irregular migration?
- To what extent do the different ways of irregular migration depend on organized crime and to what extent are they dominated/controlled by it?
- How many organized criminal groups are estimated to be involved in the smuggling of migrants?
- What is the structure and degree of hierarchical organization of such groups?
- What is the size of such groups?

- What is the nationality of the criminals involved in such groups?
- What is the modus operandi used by organized criminal groups?
  - How and where are contacts established between smugglers and migrants?
  - What are the methods of transportation and concealment of smuggled migrants?
  - Where and how are means of transportation, in particular vessels, acquired and refurbished?
  - Are fraudulent travel and identity documents used? Who provides them?
  - Do the criminal groups resort to corrupt practices? What is the purpose of those corrupt practices and whom do they involve in it?
- How large are the profits for the smugglers? How much does a migrant pay?
- Are organized criminal groups that are involved in smuggling of migrants also involved in other illegal activities? What are those activities?
- What is the situation of trafficking in persons? What are the recent trends?
- What is the degree of connection between smuggling of migrants and trafficking in human beings?

Source: UNODC.

Promising practices

The following is a non-exhaustive list of assessments on the themes of smuggling of migrants and irregular migration. The material is presented in alphabetical order by organization.

Center for Comparative Immigration Studies, University of California

Kyle, David, and Zia Liang. *Migration Merchants: Human Smuggling From Ecuador and China*, Working Paper, No. 43. San Diego: Center for Comparative Immigration Studies, University of California, 2001. Available from http://escholarship.org/uc/item/5h24b7j6.

Clandestino

Clandestino was an interdisciplinary project that aimed at supporting policymakers in designing and implementing appropriate policies regarding undocumented migration. The aims of the project were:

- To provide an inventory of data and estimates on undocumented migration (stocks and flows) in selected European Union countries
- To analyse these data comparatively
- To discuss the ethical and methodological issues involved in the collection of data, the elaboration of estimates and their use
- To propose a new method for evaluating and classifying data on and estimates of undocumented migration in the European Union

Clandestino was funded by the European Commission and ran from September 2007 to August 2009.

For information about the Clandestino project, visit http://clandestino.eliamep.gr/about.

Database on Irregular Migration

Created as part of the Clandestino project, the Database on Irregular Migration provides an inventory and a critical appraisal of data and estimates in the European Union and selected member States, in addition to detailed background information. The database contains estimates of the size of irregular migrant populations and on their gender, age, nationality and sector of economic activity. Quantitative information is accompanied by substantial background materials on issues of general concern and the situation in individual countries.

In the absence of official figures, country experts involved in the Clandestino project aimed to collect relevant estimates regarding irregular migration in their respective countries up to autumn 2008. They also sought to include these figures in discussions of the migration situation, migration policy and public discourse in their countries.

The Database on Irregular Migration is hosted by the Hamburg Institute of International Economics and is available at http://irregular-migration.hwwi.net.

Consortium for Applied Research on International Migration

The Consortium for Applied Research on International Migration (CARIM) was created in February 2004 and is co-financed by the European Commission.

CARIM aims to observe, analyse and predict migration in the southern and eastern Mediterranean region and sub-Saharan countries.

The CARIM website contains information, data and contributions by experts on the countries and areas studied (Algeria, Chad, Egypt, Israel, Jordan, Lebanon, Libyan Arab Jamahiriya, Mali, Mauritania, Morocco, Niger, Palestine, Senegal, Syrian Arab Republic, Tunisia and Turkey). All of those countries are studied as origin, transit and immigration countries.

CARIM considers international migration in the region from three different perspectives: economic and demographic; legal; and socio-political. www.carim.org

European Police Office

European Police Office, *European Organised Crime Threat Assessment*, published annually.

This is a report that has been published annually since 1993. Since then, it has changed considerably: it used to be a compilation of the national contributions of 15 member States, but has now developed into a threat assessment document that is based on contributions from 25 member States as well as the European Police Office (Europol), and focuses on the results of the ongoing operational work with regard to different crimes. The report also makes use of other publications on organized crime. Before becoming the European Organised Crime Threat Assessment in 2006, the report was entitled the European Union Organised Crime Report.

www.europol.europa.eu/index.asp?page=publications

European Police Office. *Facilitated Illegal Migration into the European Union*. The Hague, 2008.

The term "facilitated illegal immigration" covers a number of serious crimes, all aimed at arranging, for financial gain, the illegal entry into or residence in a country in violation of the laws of that country. This report looks at facilitated illegal immigration within the European Union and covers the production and procurement of falsified documents, routes into member States, the involvement of organized crime and the law enforcement response.

www.europol.europa.eu/publications/Serious_Crime_Overviews/Facilitated_illegal_immigration_2008.pdf

Global Commission on International Migration

Koser, Khalid. Irregular migration, state security and human security, paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration, 2005. Available from www.gcim.org/attachements/TP5.pdf.

International Centre for Migration Policy Development

East Africa Migration Route Initiative Gaps and Needs Analysis

This project is funded by the UK Border Agency and implemented by the International Centre for Migration Policy Development (ICMPD) as part of the European Unions Global Approach to Migration and, more specifically, the East Africa Migration Route Initiative.

The objective of this project was to provide a knowledge base on migration patterns along the East Africa migration routes and to provide recommendations for migration-related support activities in the interest of all countries along these routes.

The project was implemented in two phases: desk research of current knowledge on East African migration routes, covering Egypt, Eritrea, Ethiopia, Kenya, the Libyan Arab Jamahiriya, Somalia, the Sudan and Yemen; and complementary field research missions to Ethiopia, Kenya and the Libyan Arab Jamahiriya, three geographically strategic countries along the East Africa migration routes, where a number of important migratory hubs are found.

www.icmpd.org/686.html?&no_cache=1&F=lbfdvpmreymbwtc&tx_icmpd_pi1[article]=1133&tx_icmpd_pi1[page]=1134

International Centre for Migration Policy Development. East Africa Migration Route Initiative Gaps & Needs Analysis Project Country Reports: Ethiopia, Kenya, Libya. Vienna, 2008.

As part of the East Africa Migration Route Initiative, ICMPD implemented the East Africa Migration Route Gaps and Needs Analysis project to establish a clearer picture of migration flows and trends as well as of the migration management capacities and frameworks in place in East Africa. The project consisted of two phases: a desk research phase, which concluded with the East Africa Migration Route Report, and a field research phase to validate and complete the findings of the preceding desk analysis. The East Africa Migration Route Report recommended focusing the field research on Ethiopia, Kenya and the Libyan Arab Jamahiriya, stating that they merited further attention as part of efforts by the European Union to understand migration flows in East Africa.

This report is the result of the field research missions to Ethiopia, Kenya and the Libyan Arab Jamahiriya, which took place between December 2007 and February 2008. During the missions, a broad range of stakeholders were consulted on the migration flows to, through and from those countries, as well as on relevant migration trends. Migration management capacities and the needs of relevant authorities were also assessed.

www.icmpd.org/fileadmin/ICMPD-Website/Migration_Management/EAMRI_Country_Reports_-_Ethiopia__Kenya__Libya_-_ICMPD_2008.pdf

International Centre for Migration Policy Development, *Interactive Map* (*i-Map*)

The i-Map is a support instrument for learning about migration issues that provides in-depth analysis of the situation in a given region.

- The i-Map has two interfaces: a public one, displaying migration routes and flows and general information, and a secure one, containing detailed information that is restricted to representatives of partner States and partner agencies.
- Thematically, the i-Map is organized around three topics: irregular migration, legal migration, and migration and development.
- The i-Map currently covers Europe, Africa, the Middle East and the Mediterranean region.
- Arabic, English and French are the languages of the current i-Map.

The i-Map was created as part of the Dialogue on Mediterranean Transit Migration (MTM). ICMPD developed the interactive map concept in 2007, in collaboration with Europol and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), with the aims of supporting States to better manage mixed migration, and fostering international cooperation.

The i-Map covers the 37 Arab and European partner States of the MTM dialogue, providing analyses on key aspects of mixed migration and showing migration routes and flows. The topics covered are interception and apprehension, including the analysis of irregular flows; smuggling and trafficking activities; reception and detention/retention of irregular migrants; asylum and protection issues; and return and readmission. Three levels of analysis are available: regional (migration routes), national (country profiles) and local (migration hubs). Information is collected from MTM partner States and other sources. The partner agencies of the i-Map are: ICMPD (lead), Europol, Frontex, the International Criminal Police Organization (INTERPOL), UNODC, the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Odysseus Academic Network. These expert international organizations and agencies play a key role in ensuring the accuracy and quality of the information provided.

Target users are analysts, operatives (e.g. law enforcement officers and border guards) and decision makers. The information provided is aimed at supporting target users in their research, analysis and forward planning. The i-Map underlines the regional context within which policies or actions are being implemented, and supports policy evaluation.

www.imap-migration.org

International Centre for Migration Policy Development. *Year Book on Illegal Migration, Human Smuggling and Trafficking in Central and Eastern Europe*.

This is a study that has been carried out annually since 1997. It analyses illegal migration and smuggling of migrants using a combination of qualitative and quantitative information to give an in-depth understanding of these processes.

http://research.icmpd.org/1301.html#c2600

International Organization for Migration

International Organization for Migration. *Baseline Research on Smuggling of Migrants in, from and through Central Asia*. Geneva, 2006.

This report discusses the issue of smuggling of migrants, distinguishing it from trafficking in persons and irregular migration, and elaborating on its link to human rights. General trends and patterns of smuggling of migrants are analysed before addressing the issue in the context of Central Asia. Three country sections provide a comprehensive guide to the migration context, relevant legislation, smuggling routes, the organization of smuggling of migrants, fees paid by migrants and profiles of smuggled migrants. Each country-specific chapter includes a list of recommendations from national migration authorities and local non-governmental organizations, gathered by local researchers. At the end of the report there are recommendations from the International Organization for Migration (IOM) on countering smuggling of migrants, and recommendations from the regional State-civic round table on smuggling of migrants that was held in Almaty in March 2006 by the Central Asia Partnership Group.

http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=24&products_id=142

International Organization for Migration. *Country Profiles*.

These Country Profiles provide a means of identifying information gaps and developing strategies to enhance data collection and data sharing through the analysis of information and data available on immigration, emigration, irregular migration, labour market conditions, skills shortages, diasporas, remittances, refugees, asylum-seekers, victims of trafficking, return migration, policies associated with these, and so on.

Recognizing the importance of the Country Profiles, IOM Budapest developed the "Black Sea Consultative Process on Migration Management", which was implemented jointly with the Organization of the Black Sea Economic Cooperation, based in Istanbul, and the IOM Geneva Research and Publication Units.

As part of this project, IOM has released several Country Profiles, including:

- *Migration in Albania: A Country Profile 2008*
- *Migration in Armenia: A Country Profile 2008*
- *Migration in Bulgaria: A Country Profile 2008*
- *Migration in Georgia: A Country Profile 2008*
- *Migration in Greece: A Country Profile 2008*
- *Migration in Moldova: A Country Profile 2008*
- *Migration in Romania: A Country Profile 2008*
- *Migration in Serbia: A Country Profile 2008*
- *Migration in Turkey: A Country Profile 2008*
- *Migration in Ukraine: A Country Profile 2008*
- *Migration in the Russian Federation: A Country Profile 2008*

http://publications.iom.int/bookstore/

International Organization for Migration. *In Pursuit of the Southern Dream: Victims of Necessity—Assessment of the irregular movement of men from East Africa and the Horn to South Africa*. Geneva, 2009.

The East and Horn of Africa have been characterized by migrants fleeing conflict, poverty and natural disasters and searching for opportunities to improve their lives. Most of the migrants from this region move from Ethiopia and Somalia towards either Europe or southern Africa. Prompted by the 2010 World Cup in South Africa, this study assesses and profiles human trafficking and smuggling of migrants towards South Africa for the purposes of employment and exploitation of cheap labour.

The report, which covers seven countries, documents the abuse and exploitation involved in the smuggling of male migrants from the East and Horn of Africa to South Africa. The report also looks at methods of recruitment, modes of transportation and corruption among government officials who collude with the smugglers. The magnitude of the migration through the eastern corridor of Africa towards the south is estimated by the author to be about 17,000 to 20,000 men per year, earning the smuggling business an estimated US$ 34 to 40 million.

http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=7&products_id=507

International Organization for Migration. *Irregular Migration and Smuggling of Migrants from Armenia*. Geneva, 2002.

This study focuses on illegal or irregular migration and smuggling of migrants from Armenia. It aims to provide a comprehensive picture of irregular migration in Armenia in order to lay a sound basis for policy and programme intervention. Chapter 1 provides an introduction and background to the study, including the definition of smuggling of migrants used in the study and the research methodology; chapter 2 looks at the nature and incidence of the problem in Armenia; chapter 3 gives a brief description of transit migration in Armenia; chapter 4 outlines and analyses the legislation in place to combat the smuggling of migrants in Armenia; and the concluding chapter provides recommendations on dealing with the issue.

http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=7&products_id=410

International Organization for Migration. *Irregular Migration in Turkey.* Geneva, 2003.

Turkey has always been a key junction for many types of migratory movements, whether by land or sea. During the last few decades, millions of Turkish migrant workers have left their country to work abroad, but Turkey itself has recently become a destination country for labour migration and a major transit country for west-bound irregular migration.

This increasing illegal transit migration poses growing challenges to the Turkish Government. This report is based on a wide range of materials gathered from transit migrants themselves, from Turkish migration authorities and, uniquely, from the people involved in smuggling of migrants. It gives information on the realities and motivations of migrants and on the illegal

smuggling of migrants business. It also discusses the need for continuing migration policy development in cooperation with Western European countries.

http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=17_20&products_id=230

International Organization for Migration. *Migrant Trafficking and Human Smuggling in Europe: Review of the Evidence with Case Studies from Hungary, Poland and Ukraine*. Geneva, 2000.

Trafficking in migrants has become a global problem that affects diverse countries of origin, transit and destination, and their international relations, security and economies. This book reviews literature on human trafficking and smuggling in Europe. It includes a discussion of the concepts, definition and international agreements and conventions dealing with human trafficking and smuggling. The second part presents case studies on Hungary, Poland and Ukraine, and includes interviews with migrants and agencies working to combat human trafficking and smuggling.

http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=19&products_id=288

International Organization for Migration. *Migration, Human Smuggling and Trafficking from Nigeria to Europe*. Geneva, 2006.

Migration from Nigeria to Europe has attracted considerable attention from both Governments and the media. This is partly because some elements of this migration flow are related to trafficking in persons and other criminal activities, and also because Nigerians now form a considerable proportion of sub-Saharan African asylum-seekers in Europe.

There are several hundreds of thousands of Nigerians in Europe, half of whom live in the United Kingdom. Italy is host to the second largest group of Nigerians and is the foremost destination for persons trafficked from Nigeria.

Existing research and documentation on Nigerians in Europe concentrates on prostitution, trafficking and other criminal activities; the great majority of Nigerian immigrants living in Europe without any involvement in such activities are not included in such studies.

http://publications.iom.int/bookstore/index.php?main_page=product_info&cPath=17_20&products_id=131

Mexican Migration Project

The Mexican Migration Project (MMP) was created in 1982 by an interdisciplinary team of researchers to further our understanding of the complex process of Mexican migration to the United States of America. The project is a joint research effort between the two countries and is co-directed by Jorge Durand, Professor of Social Anthropology at the University of Guadalajara (Mexico), and Douglas S. Massey, Professor of Sociology and Public Affairs at Princeton University (United States).

Since its inception, the main focus of MMP has been to gather social and economic information on Mexican-United States migration. The data collected has been compiled in a comprehensive database that is available to the public free of charge for research and educational purposes.

Aims and scope of the project:

- To gather and maintain high-quality data on the characteristics and behaviour of documented and undocumented Mexican migrants to the United States
- To make the collected data available to the public for research and educational purposes, while maintaining the confidentiality of respondents
- To continue to investigate the evolving nature of transnational migration between Mexico and the United States

More information is available from http://mmp.opr.princeton.edu.

Organization for Economic Cooperation and Development

Organization for Economic Cooperation and Development. *International Migration Outlook*. Paris, 2009.

The Organization for Economic Cooperation and Development (OECD) analyses recent developments in migration movements and policies Its *International Migration Outlook* focuses on the economic and social aspects of migration.

The 2009 edition of the *International Migration Outlook* focuses in particular on the impact of the economic crisis on migration flows and policy responses.

It is available from www.oecd.org/els/migration/imo.

Pacific Immigration Directors' Conference

People Smuggling, Human Trafficking and Illegal Migration Report (Pacific Immigration Directors' Conference, Suva)

This Pacific Immigration Directors' Conference (PIDC) report is based on survey responses from the 23 PIDC member States. It presents the clearest picture of issues concerning the movement of people in the Pacific Island region, including trafficking in persons. The report also addresses the trafficking response and highlights that only about half of PIDC members have appropriate human trafficking legislation in place.

The report is available to members only from www.pidcsec.org.

United Nations

Regional Thematic Working Group on International Migration including Human Trafficking. *Situation Report on International Migration in East and South-East Asia*. Bangkok, 2008.

The Regional Thematic Working Group on International Migration including Human Trafficking was established in 2005, under the auspices of the Regional Coordination Mechanism of the United Nations. The members of the Group include 16 regional offices of United Nations agencies, programmes and relevant intergovernmental organizations in the Asia-Pacific region. It is currently co-chaired by the Economic and Social Commission for Asia and the Pacific (ESCAP) and the International Organization for Migration (IOM).

This report covers migration dynamics in East and South-East Asia and is a collaborative effort by all the organizations that participate in the Regional Thematic Working Group, the aim of which is to explore the complex interlinkages between international migration and the process of economic, demographic and social development within the region. As such, the report aspires to be a tool both for migration policy formulation and for fostering understanding of social and cultural interaction. It is also hoped that the findings of this report will support public dialogue that will, in the long term, lead to a process of developing coherent and coordinated migration policies. The report suggests key areas in which there is scope for greater regional and subregional cooperation to improve the management of migration and enhance migration's positive impacts on the source and host countries and the migrants themselves.

www.iom-seasia.org/resource/pdf/iomsituationreport.pdf

United Nations, Department of Economic and Social Affairs, Population Division. *International Migration Report 2006: A Global Assessment*. New York, 2009.

This is the second in a series that presents information on international migration levels and policies as well as other related indicators for major areas, regions and countries of the world.

The *International Migration Report 2006* consists of three major parts. The first part discusses major trends in the international migrant stock and international migration policies since the 1990s and includes an overview of major legal instruments on international migration and their ratification status. The second part includes the resolutions on international migration and development adopted by the General Assembly in 2003, 2004 and 2005, as well as the corresponding reports of the Secretary-General on international migration and development. The third part presents international migration profiles at the global level as well as for all major areas and regions, special country groupings and individual countries. The profiles include information on population estimates and projections, the international migrant stock, net migration flows, refugees, remittances, Government views and policies relating to immigration and emigration levels, and the ratification status of relevant international instruments.

www.un.org/esa/population/publications/2006_MigrationRep/report.htm

United Nations Global Migration Database

This database is a promising example of an international effort to assess the global migration situation. It is a comprehensive collection of empirical data on the number of international migrants by country of birth and citizenship, sex and age, as derived from population censuses, population registers, nationally representative surveys and other official statistical sources from more than 200 countries and territories in the world.

The database addresses key policy questions that have remained unanswered so far, including:

- What are the main countries of origin of international migrants?
- What is the sex and age distribution of international migrants?
- What changes have taken place in the international migrant stock over time for particular countries of origin or age groups?

In addition, the database allows for the quantification and monitoring of vulnerable groups in need of special protection, such as migrant women and children, and stateless persons. The database is accessible to registered users at http://esa.un.org/unmigration.

United Nations Office on Drugs and Crime. *Crime facilitating migration from Pakistan and Afghanistan*.

Migration from Afghanistan and Pakistan has received significant attention from a number of observers with a variety of perspectives. This assessment adds value by investigating the crimes and criminal networks that facilitate migration, with a focus on smuggling of migrants rather than human trafficking.

The assessment is the result of collaboration between the United Nations Office on Drugs and Crime (UNODC) offices in Afghanistan and Pakistan. It contains primary research, which is backed up by a non-exhaustive literature review. In total, the research team interviewed 166 people, mostly in Afghanistan and Pakistan but also in the United Kingdom, Australia and the United Arab Emirates. Interviewees included serving and former Government officials, representatives of international organizations and non-governmental organizations, migrants, migrants' families, community leaders and criminals offering services to migrants.

This report is currently being prepared. For more information, visit the website of the UNODC Country Office in Pakistan at www.unodc.org/pakistan/en/contact_information.html.

United Nations Office on Drugs and Crime, Regional Office for South Asia. *Smuggling of Migrants from India to Europe and in particular to the UK: A Study on Tamil Nadu.* New Delhi, 2009.

The main aim of this report is to attempt to assess the current extent and nature of irregular migration from Tamil Nadu, with the objective of improving evidence-based knowledge on the profile of the migrants, the modus operandi of the agents, the countries to which migration is destined and the Government response to irregular migration. Furthermore, it makes recommendations aimed at controlling this phenomenon and raise awareness of the problems, as well as strengthening the capacities of law enforcement authorities.

The study was based on law enforcement authority records, discussions with officials and public representatives, extensive field visits in the districts of Tanjavur, Thiruvarur, Pudukkottai and Namakkal and interviews with a large number of respondents, mostly neighbours of irregular migrants, deportees and the family members of such deportees, and travel agents. These four districts were chosen because of the large number of cases of irregular migration that are reported from here.

A number of recommendations are put forward in the report on a framework for future UNODC technical assistance initiatives on combating irregular migration from this region.

www.unodc.org/documents/human-trafficking/Smuggling_of_Migrants_from_India.pdf

Miscellaneous literature

Antonopoulos, Georgios A., and John Winterdyk. The Smuggling of Migrants in Greece: An Examination of its Social Organization. *European Journal of Criminology*, vol. 3, No. 4 (2006).

http://euc.sagepub.com/cgi/content/abstract/3/4/439

Düvell, Franck. Crossing the fringes of Europe: Transit migration in the EU's neighbourhood, Working Paper No. 33. Oxford: University of Oxford, Centre on Migration, Policy and Society, 2006.

It has been observed that migrants often cross several countries before reaching their final destination in Europe, this phenomenon is called transit migration. Migrants are increasingly risking their lives when moving in this way. Because of fear over illegal immigration and for humanitarian reasons, transit migration has become a public and policy concern. This paper looks at the emergence of the concept and surveys some empirical studies. It examines the discursive use of the idea, its politicized character and blurred nature, and highlights some methodological difficulties in studying transit migration. Lastly, it raises some human rights and policy implications.

www.compas.ox.ac.uk/fileadmin/files/pdfs/WP0633-Duvell.pdf

Içduygu, Ahmet. Transborder Crime between Turkey and Greece: Human Smuggling and its Regional Consequences. *Southeast European and Black Sea Studies*, vol. 4, No. 2 (May 2004), pp. 294-314.

home.ku.edu.tr/~aicduygu/article%204.pdf

Salt, John. *Current Trends in International Migration in Europe*. Strasbourg: Council of Europe, 2006.

www.coe.int/t/dg3/migration/Documentation/Migration%20management/2005_Salt_report_en.pdf

4.3 Guidance for conducting rapid needs assessments in conflict and post-conflict areas

The collapse of statecraft and rule of law during and after an armed conflict in a country or region exposes the population to a high risk of forced migration and of falling prey to migrant smugglers.

Armed conflicts lead to an increased demand for movement for several reasons: the absence of governmental protection mechanisms increases criminality and asymmetric security threats; the destruction of traditional and regulated economies promotes the increase of new unregulated and illegal markets; and the undermining of social order and structures generates vulnerable groups including orphans, internally displaced persons and refugees.

Some of the key questions that could be asked in such situations are the following:

- Are there mechanisms to monitor the informal markets that have emerged as a result of the conflict or the post-conflict situation?
- Are peacekeeping personnel aware of the issue of the smuggling of migrants?
- Are support and assistance structures available for vulnerable groups, including refugees, internally displaced persons and children?
- Are international or regional actors in place to provide humanitarian aid and assistance for civilians affected by the armed conflict?
- Do such actors monitor and document different forms of human rights violations in the conflict area?
- Are they informed about the crime of smuggling of migrants?
- Do specialized tools exist that enable humanitarian aid providers to document cases of smuggling of migrants?

Recommended resources

Inter-Agency Standing Committee

The Inter-Agency Standing Committee (IASC) is a unique inter-agency forum for coordination, policy development and decision-making that involves the key United Nations and non-United Nations humanitarian partners. IASC was established in June 1992 in response to United Nations General Assembly resolution 46/182, on the strengthening of humanitarian assistance. General Assembly resolution 48/57 affirmed its role as the primary mechanism for inter-agency coordination of humanitarian assistance.

Under the leadership of the Emergency Relief Coordinator, IASC develops humanitarian policies, agrees on a clear division of responsibility for the various aspects of humanitarian assistance, identifies and addresses gaps in response, and advocates for effective application of humanitarian principles. Together with the Executive Committee for Humanitarian Affairs, IASC forms the key strategic coordination mechanism for major humanitarian actors.

IASC has produced several publications relevant to the smuggling of migrants, including *Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster* (2008).

www.humanitarianinfo.org/iasc

International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) is a neutral and independent organization whose humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, ICRC is at the origin of the Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.

www.icrc.org

Médecins Sans Frontières

Médecins Sans Frontières (MSF) is an international, independent medical humanitarian organization that delivers emergency aid and medical assistance to people affected by armed conflict, epidemics, health-care exclusion and natural or man-made disasters.

In countries where health structures are insufficient or even non-existent, MSF collaborates with authorities to provide assistance. It provides rehabilitation and dispensaries, vaccination programmes, and water and sanitation projects. It also works in remote health-care centres and slum areas and provides training for local personnel. All this is done with the objective of rebuilding health structures to acceptable levels.

www.msf.org

Office of the United Nations High Commissioner for Refugees

The Office of the United Nations High Commissioner for Refugees (UNHCR) was established on 14 December 1950 by the United Nations General Assembly. The Office is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek

asylum and find safe refuge in another State, with the option to return home voluntarily, integrate locally or resettle in a third country.

www.unhcr.org

United Nations Office on Drugs and Crime. *Needs assessment toolkit on the criminal justice response to human trafficking*.

A Toolkit that is aimed at providing comprehensive guidance for assessing the criminal justice response to trafficking in persons in a given State. It consists of a standardized and cross-referenced set of tools designed to enable experts from international organizations, non-governmental organizations, national development agencies and other government entities, as well as relevant institutions, to conduct a comprehensive or specific assessment of selected aspects of a country's criminal justice response to trafficking in persons. It covers various assessment topics, including rapid needs assessments in conflict and post-conflict areas.

This Toolkit is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime and Department of Peacekeeping Operations of the United Nations. *United Nations Criminal Justice Standards for United Nations Police*. New York, 2009.

This handbook summarizes the international human rights and criminal justice principles that United Nations police personnel must know, abide by and promote when deployed in peacekeeping operations and special political missions. As such, it is designed to serve a dual purpose: firstly, it is a code of conduct for police operating under the United Nations flag; secondly, it is a reference source to help national authorities improve their policing.

www.unodc.org/documents/justice-and-prison-reform/08-58900_Ebook.pdf

4.4 Guidance for conducting assessments of the national response

The following are examples of questions that can be asked when conducting assessments of the national response to the smuggling of migrants.

Policies and coordination at the national level

- Is there a national mechanism ensuring coordination/cooperation among the national actors dealing with the smuggling of migrants?
- What measures are taken to ensure coordination/cooperation between intelligence services and law enforcement agencies?
- Is there a national policy (such as a national action plan) that guides action against the smuggling of migrants?
- Who is responsible for policy development?

Effectiveness of the State's capacities to counter the smuggling of migrants

Investigation, prosecution and conviction

- Are trafficking in persons and smuggling of migrants cases investigated and recorded separately?
- Do the criminal investigation units that are in charge of investigating smuggling of migrants have adequate capacities (staff and equipment)?
- What techniques are used in investigating the smuggling of migrants?
- Are there official statistics on investigations, prosecutions and convictions with regard to the smuggling of migrants?
- How many smuggling of migrants cases are being or have been investigated?
- How many persons are being/have been prosecuted?
- How many convictions have been made?
- What penalties have been applied?
  - If custodial sentences have been applied, what length of time has been served by the prisoners in question?
  - Have proceeds from criminal activity been confiscated?
- Are repatriated migrants and/or detected illegal migrants questioned about the involvement and modus operandi of organized crime groups in migration networks so that members of such groups can be prosecuted?
- Does the country have a witness protection programme to ensure the safety of witnesses and their loved ones, including when giving evidence in criminal proceedings?
  - If yes, does this witness protection programme also apply for smuggled migrants?

- What are the main impediments to effective investigation, prosecution, and conviction?

Corruption

- What measures are being taken to prevent, detect and punish corruption among law enforcement, border control and immigration authorities?

Travel and identity documents

- What measures have been taken to prevent and detect the use of fraudulent travel and identity documents (including unlawful creation and issuing)?
- What mechanisms are in place to verify the legitimacy and validity of travel and identity documents issued by the country itself or by a third country?

Border control

- What measures have been taken to secure the blue and green borders, including at airports, and to prevent and detect the smuggling of migrants?
- What measures have been taken to prevent and detect smuggling of migrants by sea?
- What measures have been taken to prevent criminal groups from acquiring vessels?
- What are the main barriers to more effective control of land, sea and air borders and the detection of smuggling of migrants?
  - Lack of human resources? Inadequate equipment? Other factors (geographical and topographical factors, corruption, etc.)?

Commercial carriers

- What measures have been taken to prevent means of transport operated by commercial carriers from being used to smuggle migrants?
- Are commercial carriers obliged to ascertain that all passengers are in possession of the travel documents required for entry into a receiving State?

Data collection, intelligence and sharing of information

- Are there official data on smuggling of migrants (routes, who is smuggled, involvement of organized crime, modus operandi, etc.)?
- Is systematic collection of data in place?
  - What national institutions gather information on illegal migration and smuggling of migrants?
- Do the national institutions that have such information share it with each other and with other institutions?
- Which institutions are involved in such information-sharing?
- What measures are taken to share information?
- Is there a centralized database to store and analyse intelligence on smuggling of migrants?
- Are there any research activities on the subject?
- What are the major impediments to effectively collecting and analysing information?

Prevention

- Is there any public discussion on the risks associated with illegal migration and, in particular, smuggling of migrants, and on the fact that smuggling of migrants is a criminal activity?
- Have there been any campaigns to increase awareness among relevant authorities and/or the general public of the fact that smuggling of migrants is a criminal activity that poses serious risk to the migrants?
  - If yes, who carried them out, who was targeted and what was done?

Training

- Has there been any training on issues related to smuggling of migrants for criminal justice practitioners (law enforcers, prosecutors and the judiciary) and border control authorities?
  - If so, what national agencies have been involved?
- Is such training part of the regular training curricula?
- What topics are addressed as part of the training?
  - Recognizing fraudulent travel and identity documents?
  - Gathering criminal intelligence on modus operandi?
  - Detecting smuggled persons?
  - Using international cooperation?

Support for migrants

- What happens to a detected or repatriated migrant?
- What measures are taken if an illegal migrant is detected in the country?
- What measures are taken when receiving a repatriated migrant back into the country?
- What measures are taken to facilitate the return of smuggled migrants?
- With what countries does the country have repatriation agreements? When did they enter into force?

International coordination and cooperation

Information exchange

- Does the country exchange information on illegal migration and smuggling of migrants with other countries and international actors?
- Which institutions are involved in such information exchange?
- What kind of information is exchanged?
  - Routes?
  - Identity and methods of the criminal actors involved?
  - Authenticity and proper form of travel documents?
  - Means and methods of concealment, transportation and abuse of documents?
  - Legislative experience and best practices?

- How and through which institutions does the information exchange with third countries function?
- Is such information exchange based on international and/or bilateral agreements and/or informal contacts?
- What major impediments can there be to information exchange with other countries and international actors?

Mutual legal assistance in investigations, prosecutions and judicial proceedings

- Does the country cooperate with other countries with regard to mutual legal assistance?
  - If so, which countries are involved and is such cooperation efficient?
- Are measures in place to respond to mutual legal assistance requests by other countries?
- Is mutual legal assistance cooperation based on international and/or bilateral agreements and/or informal contacts?

Other forms of cooperation in investigations, prosecutions and judicial proceedings

- Does the country conduct joint investigations with other countries?
  - Is such cooperation based on international and/or bilateral agreements and/or informal contacts?
- Does the country cooperate with other countries with regard to extradition?
  - Is such cooperation based on international and/or bilateral agreements and/or informal contacts?
- Does the country cooperate with other countries for the purpose of confiscating proceeds from criminal activities related to the smuggling of migrants?
  - Is such cooperation based on international and/or bilateral agreements and/or informal contacts?

Border control

- With which States and with which of their institutions does the country cooperate to secure green and blue borders?
- What are the measures that have been taken in cooperation with other States to secure blue and green borders, including at airports, in order to prevent illegal migration and the smuggling of migrants?

Documents

- What mechanisms are in place to verify the legitimacy and validity of travel and identity documents issued by the country itself or by a third country?

Technical assistance and other forms of cooperation

- Do other countries provide the country with technical assistance (expertise and equipment)?

  - If yes, what kind of technical assistance is provided, what national institutions receive it and what countries provide it?
- Is the country involved in any other international or bilateral agreements, regional action plans or other international initiatives with regard to illegal migration and smuggling of migrants?

Source: UNODC.

Promising practices

Council of Europe. *Policies on irregular migrants—Volume I: Italy and Germany. Strasbourg*, 2008.

The insecurity faced by irregular migrants on a daily basis because of the unlawfulness of their residence prompted the European Committee on Migration to assess their situation in Council of Europe member States. The aims of the exercise were to pool and evaluate national experiences and to draw up possible proposals for dealing with irregular migrants and improving cooperation between countries of origin and host countries.

Five countries volunteered (Armenia, Germany, Greece, Italy and the Russian Federation) and submitted aspects of their national policies on irregular migrants for evaluation.

The first volume contains a summary chapter (objectives, methodology, lessons to be drawn, etc.) and the national reports of Italy and Germany.

http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=2318

Transcrime. *Trafficking and Smuggling of Migrants into Italy*. Milan, 2003.

This report identifies ways to improve:

- Judicial responses to trafficking in persons and smuggling of migrants
- International cooperation among law enforcement agencies and judiciaries to dismantle criminal organizations involved in human trafficking and smuggling
- Preventing trafficking in persons and smuggling of migrants by acquiring knowledge about criminal organizations and their modus operandi
- Actions for the social protection of victims of trafficking and smuggled migrants

http://transcrime.cs.unitn.it/tc/422.php

Recommended resources

More assessments of the situation of smuggling of migrants can be found at the following sites (see below).

International Organization for Migration

www.iom.int

United Nations Office on Drugs and Crime

www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuside

4.5 Guidance on conducting legal framework assessments

Legislation and legal procedures and practices vary widely among States. In some States, existing laws on labour, migration and organized crime may not have been harmonized with more recent laws or treaty obligations on combating the smuggling of migrants. Furthermore, legislation may be required to increase victim protection measures or to prevent trafficking.

When it comes to smuggling of migrants, a broad and comprehensive assessment of the national legal framework is usually required that covers criminal law, labour law, social services, employment laws and immigration and asylum laws, as well as investigative, criminal and judicial procedures.

The following are examples of questions to be asked when conducting an assessment of legal frameworks with respect to the smuggling of migrants:

- Has the country ratified the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air?
- Is participating in an organized criminal group criminalized under the country's legislation?
  - If yes, please provide copies of the relevant legislation and indicate when it came into force.

The following questions also serve to gather information to form the basis of a more thorough desk analysis of the compliance of domestic legislation with the Smuggling of Migrants Protocol.

- Is smuggling of migrants criminalized in the country's domestic legislation?
  - If yes, please provide copies of the relevant legislation and indicate when it came into force.
- Is smuggling of migrants defined as a criminal offence in accordance with article 3, subparagraph *(a)*, of the Smuggling of Migrants Protocol ("'Smuggling of migrants' shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.")?
- Does domestic legislation make a distinction between smuggling of migrants and trafficking in persons, as defined in article 3, subparagraph *(a)* of the Trafficking in Persons Protocol ("'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose

of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.")?

- Are there any further laws or legal documents that specifically address smuggling of migrants?
  - If yes, please provide copies and indicate when the legislation came into force.
- What other existing legislation can be used in smuggling of migrants cases?
- Are there any difficulties hampering the adoption of adequate national legislation?

Source: UNODC.

Promising practices

International Organization for Migration. *Comparative Analysis of International Instruments and Macedonian Legislation on Counter-Trafficking and Illegal Migration*. Skopje, 2007.

This trilingual study compares the domestic legislation of Macedonia with the Trafficking in Persons and Smuggling of Migrants Protocols and assesses the compliance of Macedonian legislation with international instruments in areas of investigation and prosecution, protection, and prevention. It offers recommendations for amending Macedonian legislation in order to achieve greater compliance with international instruments.

The full report is available from www.iom.hu/PDFs/TEMIS%20Analysis.pdf.

United Nations Office on Drugs and Crime. *Assessment of the legal system in Viet Nam. Hanoi*, 2004.

A group of legal experts in the Department for Criminal and Administrative Laws of the Ministry of Justice of Viet Nam conducted an assessment of the Vietnamese legal system in relation to the Trafficking in Persons and Smuggling of Migrants Protocols. This assessment was undertaken in collaboration with the United Nations Children's Fund (UNICEF). It assesses Vietnamese domestic law in relation to the Protocols and makes recommendations to bring it further into line with international law.

The full report is available from www.unodc.org/documents/eastasiaandpacific//Publications/vietnam/legal_system_vietnam_2004-05.pdf.

4.6 Guidance for conducting criminal justice system assessments

The development and implementation of measures to strengthen a country's criminal justice response must be well targeted and based on a proper assessment in order to ensure that a country's needs are met in a way that:

- Prioritizes those measures that address the most urgent needs
- Ensures the best use of the available resources
- Fosters synergies where possible, while avoiding duplication of work

During the initial stage of an assessment process, the organization or individual acting as the assessor has to decide on the specific purpose and outline of the assessment. This is followed by a preparatory desk review, an analysis of the relevant stakeholders and the identification of a contact point in the State in question. The following factors need to be determined:

- The number of stakeholders to be interviewed by the assessor
- The grade of data analysis
- The structure of the assessment report
- The number of assessment missions to the State in question
- The timeframe of the overall project

Preparatory desk review

The preparatory desk review will be carried out by the assessor prior to the assessment missions. During this phase, existing data and information on the State in question will be evaluated in accordance with the overall purpose of the project. In order to come to reliable conclusions during an assessment, the quality and reliability of the information has to be analysed. While media and anecdotal reports should be taken into account during the assessment process, they should not be used in place of quantitative and qualitative data from reliable sources.

Below are examples of the types of questions that need to be asked when carrying out a needs assessment of criminal justice capacities to combat the smuggling of migrants.

National actors

- Which Government offices and national institutions deal with illegal migration?
  - What are their respective roles?
- What are the main law enforcement actors in the country?
- Which institutions are in charge of investigating organized crime?

- Which Government offices and national institutions (including ministries, intelligence services, border guards, police, prosecution and the judiciary) deal with the smuggling of migrants?
  - What are their respective roles?
- Which institutions are responsible for investigating the smuggling of migrants?
- Is there a special unit to investigate cases of smuggling of migrants?
- Are there specialized prosecutors for cases of smuggling of migrants?
- Which institutions are responsible for securing blue and green borders, including at airports?
  - What are their respective mandates?

Non-State and international actors

- What non-governmental organizations, international organizations and other partners work on issues related to the smuggling of migrants in the country?
- What issues do they address?

Legal and regulatory framework

- Does the country's legal framework address all elements of the crime of smuggling of migrants, as set forth in the Smuggling of Migrants Protocol? (See subsections 3.3 and 5.2.)
- Does the country's legal framework cover all the relevant areas for preventing and prosecuting the crime of smuggling of migrants and for protecting smuggled migrants?

Investigations and court proceedings

- What is the number of investigations, prosecutions and convictions for crimes related to the smuggling of migrants in the country?
- Are there specialized law enforcement units to investigate the crime of smuggling of migrants?
- Do mechanisms such as regular training and capacity-building exist so that there is a profound understanding of the complexity of the crime in every law enforcement unit?
- Are there mechanisms in place encouraging cooperation between law enforcement officers, prosecutors and judges on cases involving smuggling of migrants?

Harmonizing the protection of smuggled migrants with the prosecution of smugglers: cooperation agreements between civil society and the State

- Are there formalized cooperation agreements between law enforcement agencies and non-governmental service providers that enable presumed smuggled migrants to be referred to protection and support structures?
- Do existing mechanisms enable illegal immigrants to have access to support and

protection structures, irrespective of whether they are cooperating or not with criminal justice authorities?

- Are procedures in place to ensure that asylum-seekers are able to have access to support and protection structures, irrespective of their immigration status or cooperation with criminal justice authorities?

Support and assistance structures

- Is there transparent access to support and assistance structures for smuggled migrants?
- Are existing intervention mechanisms and structures in place, including for unaccompanied children and asylum-seekers?

Return structures

- Are there comprehensive and accessible procedures and mechanisms in place to ensure the safe return of smuggled migrants to their country of nationality or permanent residence?

National coordination mechanisms: monitoring, evaluation and policy formulation

- Is there a mechanism in place at the national level that monitors, evaluates and coordinates an overall strategy to combat the smuggling of migrants?
  - If so, is that mechanism based on the multidisciplinary participation of all relevant stakeholders, including civil society, employers and trade unions?

International cooperation

- Is the country party to extradition and mutual legal assistance treaties?
- Do existing bilateral and multilateral agreements form an overall strategy to combat the smuggling of migrants that includes assisting and protecting smuggled migrants, prosecuting perpetrators, and measures to prevent the smuggling of migrants?
- Is there a regular assessment of existing transnational cooperation agreements between judicial and law enforcement authorities?

Prevention

- Are criminal justice agencies involved in specialized prevention programmes?
- Are there social and economic programmes in place to counteract exploitative labour conditions?
- Are specialized research institutions working to develop understanding of and research into the root causes of the smuggling of migrants?

Source: UNODC.

Recommended resources

McGarry, Peggy and Becki Ney. *Getting it Right: Collaborative Problem Solving for Criminal Justice*. Washington, D.C.: United States Department of Justice, National Institute of Corrections, 2006.

Although the tools contained in this guide are intended for use in the United States, resources can be drawn from it and adapted for other criminal justice systems. Section four focuses on building understanding of the criminal justice system. The six chapters in this section concern:

- Obtaining necessary information
- Planning the system assessment
- Mapping the system
- Documenting and assessing current policies and practices
- Gathering information on offenders
- Documenting and assessing available resources

Additionally, the guide provides sample exercises, strategies, checklists, questionnaires and task lists.

The guide is available from http://nicic.org/Library/019834.

United Nations Office on Drugs and Crime. *Criminal Justice Assessment Toolkit*. New York, 2006.

This practical guide assists in the assessment of criminal justice systems and the integration of United Nations crime prevention and criminal justice norms and standards into national criminal justice systems, as well as in training on these issues.

It is designed to be used in countries with simple or complex institutions or processes, and will be particularly useful for countries undergoing transition or reconstruction. The Toolkit is useful for both legal experts and assessors who may be conducting assessments in areas other than criminal justice.

The tools have been grouped into criminal justice sectors (see below).

Policing

- Public safety and police service delivery
- Integrity and accountability of the police
- Crime investigation
- Police information and intelligence systems

Access to justice

- Courts
- Independence, impartiality and integrity of the judiciary

- Prosecution service
- Legal defence and legal aid

Custodial and non-custodial measures

- Prison system
- Detention prior to adjudication
- Alternatives to incarceration
- Social reintegration
- Cross-cutting issues
- Criminal justice information
- Juvenile justice
- Victims and witnesses
- International cooperation
- Crime prevention assessment tool

The Toolkit (updated on an ongoing basis) is available in hard copy and electronically from www.unodc.org/unodc/en/justice-and-prison-reform/Criminal-Justice-Toolkit.html.

United Nations Office on Drugs and Crime. *Needs assessment toolkit on the criminal justice response to human trafficking*.

This resource complements the UNODC Criminal Justice Assessment Toolkit (above) as it covers aspects that need to be taken into consideration in criminal justice responses to trafficking in persons.

The development and implementation of measures to strengthen a country's criminal justice response must be based on a proper assessment in order to ensure that a country's needs are met in a way that prioritizes measures addressing the most urgent needs, ensures the best use of available resources and fosters synergies where possible, without duplicating work.

The aim of the Toolkit is to provide comprehensive guidance for assessing the criminal justice response to trafficking in persons in a given State.

It consists of a standardized and cross-referenced set of tools designed to enable experts from international organizations, non-governmental organizations, national development agencies and other governmental entities, and relevant institutions, to conduct a comprehensive or specific assessment of selected aspects of a country's criminal justice response to trafficking in persons. This includes:

- Identifying gaps in the existing criminal justice response to trafficking in persons
- Facilitating the formulation and development of technical assistance projects that adequately respond to the gaps and needs identified
- Facilitating the development of indicators for evaluating the impact of technical assistance projects

Assessment topics covered by the Toolkit include:

- Methodology for conducting assessments
- Legal and regulatory framework
- Investigations and court proceedings in cases of trafficking in persons
- Identification of persons presumed to have been trafficked
- Harmonizing protection of trafficked persons with prosecution of traffickers through cooperation agreements between representatives of civil society and the State
- Support and assistance structures for persons presumed to have been trafficked
- Social inclusion of persons presumed to have been trafficked in origin, destination or third countries
- National coordination mechanisms for policy formulation, monitoring and evaluation
- International cooperation
- Prevention
- Rapid needs assessments in conflict and post-conflict areas (see subsection 4.3)

The Toolkit is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

4.7 Guiding principles in developing responses to the smuggling of migrants

Law enforcement measures alone cannot prevent the smuggling of migrants. If not combined with a holistic approach, increased border controls may simply have the result of diverting the routes used to smuggle migrants elsewhere and increasing the demand for higher-risk services. If migrants are simply returned to their countries of nationality or residence without consideration for the underlying causes that made them decide to migrate, they may simply attempt to migrate again—perhaps under more dangerous conditions than those endured before. There are important push and pull factors that can cause a person to become a smuggled migrant; all of them must be addressed in a comprehensive way, based upon a multidimensional partnership involving States, civil society, academia, the media, State institutions and international organizations.

The Global Commission on International Migration (GCIM) was launched by the Secretary-General of the United Nations and a number of Governments in December 2003 and it closed in December 2005. It was an independent entity comprising 19 Commissioners and its mandate was to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration.

The GCIM report, *Migration in an interconnected world: New directions for action*, was presented to the Secretary-General, United Nations Member States and other stakeholders in October 2005.

In its report, GCIM says that the international community has failed to recognize the full potential of migration and has not risen to the many opportunities and challenges it presents. It stresses the need for greater coherence, cooperation and capacity to achieve more effective governance of international migration. The report provides a comprehensive yet concise analysis of key global policy issues in the field of international migration, and presents six "Principles for Action" and 33 related recommendations that can serve as a guide for the formulation of migration policies at the national, regional and global levels.

The Principles for Action offer guidance to policymakers when drafting plans of action against irregular migration, including the smuggling of migrants. The six key Principles for Action offered by GCIM are as follows:

Principles for Action

I. Migrating out of choice: migration and the global economy

Women, men and children should be able to realize their potential, meet their needs, exercise their human rights and fulfil their aspirations in their country of origin, and hence migrate out of choice rather than necessity. Those women and men who migrate and enter the global labour

market should be able to do so in a safe and authorized manner, and because they and their skills are valued and needed by the States and societies that receive them.

II. Reinforcing economic and developmental impact

The role that migrants play in promoting development and poverty reduction in countries of origin, as well as the contribution they make towards the prosperity of destination countries, should be recognized and reinforced. International migration should become an integral part of national, regional and global strategies for economic growth, in both the developing and developed world.

III. Addressing irregular migration

States, exercising their sovereign right to determine who enters and remains on their territory should fulfil their responsibility and obligation to protect the rights of migrants and to readmit those citizens who wish or who are obliged to return to their country of origin. In stemming irregular migration, States should actively cooperate with one another, ensuring that their efforts do not jeopardize human rights, including the right of refugees to seek asylum. Governments should consult with employers, trade unions and civil society on this issue.

IV. Strengthening social cohesion through integration

Migrants and citizens of destination countries should respect their legal obligations and benefit from a mutual process of adaptation and integration that accommodates cultural diversity and fosters social cohesion. The integration process should be actively supported by local and national authorities, employers and members of civil society, and should be based on a commitment to non-discrimination and gender equity. It should also be informed by an objective public, political and media discourse on international migration.

V. Protecting the rights of migrants

The legal and normative framework affecting international migrants should be strengthened, implemented more effectively and applied in a non-discriminatory manner, so as to protect the human rights and labour standards that should be enjoyed by all migrant women and men. Respecting the provisions of this legal and normative framework, States and other stakeholders must address migration issues in a more consistent and coherent manner.

VI. Enhancing governance: coherence, capacity and cooperation

The governance of international migration should be enhanced by improved coherence and strengthened capacity at the national level; greater consultation and cooperation between States at the regional level; and more effective dialogue and cooperation among Governments and between international organizations at the global level. Such efforts must be based on a better appreciation of the close linkages that exist between international migration and development and other key policy issues, including trade, aid, state security, human security and human rights.

The GCIM recommendations on addressing irregular migration are as follows:

- States and other stakeholders should engage in an objective debate about the negative consequences and the prevention of irregular migration.
- Border control policies should form part of a long-term approach to the issue of irregular migration that addresses the socio-economic, governance and human rights

deficits that prompt people to leave their own country. This approach must be based on inter-State dialogue and cooperation.

- States should address the conditions that promote irregular migration by providing additional opportunities for regular migration and by taking action against employers who engage migrants with irregular status.
- States should resolve the situation of migrants with irregular status by means of return or regularization.
- States must strengthen their efforts to combat the distinct criminal phenomena of smuggling of migrants and human trafficking. In both cases, perpetrators must be prosecuted, the demand for exploitative services eradicated and appropriate protection and assistance provided to victims.
- In their efforts to stem irregular migration, States must respect their existing obligations under international law towards the human rights of migrants, the institution of asylum and the principles of refugee protection.

The full report is available from www.gcim.org/attachements/gcim-complete-report-2005.pdf.

Recommended resources

Migration Policy Institute

An independent, non-partisan, non-profit think tank dedicated to the movement of people worldwide.

www.migrationpolicy.org

Koser, Khalid. *Strengthening policy responses to migrant smuggling and human trafficking*, discussion paper for the Civil Society Days of the Global Forum on Migrant and Development. Geneva: Geneva Centre for Security Policy, 2008.

www.migrationanddevelopment.net/research-publications/strengthening-policy-responses-to-migrant-smuggling-and-human-trafficking/at_download/file

Thouez, Colleen. *The role of civil society in the migration policy debate*, *Global Migration Perspectives*, No. 12. Geneva: Global Commission on International Migration, 2004. Available from www.gcim.org/en/ir_gmp.html.

4.8 Developing a multiagency approach to intervention

Broad-based expertise is required to respond effectively to the smuggling of migrants and to address the multiple needs of smuggled migrants who are victims of crime. For this reason, it is essential that a multiagency approach be taken to any initiative so that the needs of victims are met and law enforcement measures are supported.

Multiagency collaboration is not easy—it takes time and effort for it to work effectively. A management and operational framework therefore needs to be agreed that can steer and manage any subsequent specific initiative or intervention. This may build on existing arrangements, where these exist.

Establishing such a framework involves:

- Identifying key contacts and agency representatives
- Establishing personal links between the various agency contacts
- Developing multiagency training
- Jointly assessing local priorities and developing strategies and action plans
- Initiating the sharing of intelligence and data
- Beginning work on protocols for joint work
- Agreeing on management structures and processes for further developing the multi-agency approach

Strong and effective leadership of multiagency partnerships is of critical importance to their success.

Responsibilities of multiagency groups

Multiagency groups must ensure that victims are supported while the law is enforced. Their responsibilities should include:

- Education and awareness-raising activities
- Ensuring that all relevant agencies and parties are informed and involved in decision-making and planning
- Joint training initiatives
- Developing appropriate working practice protocols
- Ensuring information exchange between statutory and non-governmental organizations
- Monitoring incidence rates and the impact of local initiatives
- Developing local strategies and action plans

Where children are involved, child protection services must play a role in coordinating multi-agency initiatives in a way that fits with strategic planning arrangements for children. It also may be appropriate for multiagency groups addressing gender-based violence to have active responsibilities in issues related to the smuggling of migrants.

Source: Adapted from the Crime Reduction Toolkit on Trafficking of People (United Kingdom Home Office), available from www.crimereduction.homeoffice.gov.uk/toolkits/tp00.htm.

Formalized cooperation mechanisms between law enforcement and non-governmental organizations

Cooperation agreements between State and non-State actors raise the rate of successful prosecution for the smuggling of migrants. Formalized protocols and memorandums of understanding between agencies provide a solid basis upon which to build this multiagency collaboration.

As a matter of best practice, formal protocols setting out the role and responsibilities of law enforcement agencies and relevant non-governmental organizations and governing the exchange of intelligence between them should be drawn up.

The safety of crime victims remains the ultimate responsibility of law enforcement officers and agreements should only be entered into with credible and secure support organizations that have the capacity to deliver victim services.

How such agreements should be worded depends upon local circumstances. However, the formalized protocols should include a general joint statement of purpose in relation to combating the smuggling of migrants and should set out the responsibilities of partners. At a minimum, a protocol should include:

- A declaration that the intelligence being retained and exchanged is in compliance with relevant data protection and confidentiality legislation
- The process and means through which intelligence will be exchanged. This may relate to a specific position within each organization or to a named individual
- A timetable of scheduled meetings, where appropriate
- The terms of the intelligence exchange, to include both personal data and thematic intelligence
- A description of the process that will be used to resolve difficulties and differences of interpretation
- A description of how the confidentiality of the personal data exchanged will be protected

Source: Adapted from the Crime Reduction Toolkit on Trafficking of People (United Kingdom Home Office), available from www.crimereduction.homeoffice.gov.uk/toolkits/tp00.htm.

Components of a memorandum of understanding

Partners

- Partners to the memorandum of understanding should be identified
- Cooperation is enhanced where partners (such as special cross-border crime units within the police and specialized non-governmental organizations) are identified

Defining purpose

- Basic principles and the purpose of cooperation should be clarified

Principles of cooperation

- A key principle is agreement on a joint approach to combating the smuggling of migrants

Target group

- Specifying the precise target group to benefit from the memorandum of understanding will contribute to successful referral of crime victims and/or traumatized smuggled migrants and victims of trafficking. (Criteria and means of identification of the latter can be based on the Trafficking in Persons Protocol.)

Communication of information

- Parties to the memorandum of understanding should agree to treat sensitive data as confidential

Entry into force and amendment of the memorandum of understanding

- The memorandum of understanding comes into effect when all relevant parties have signed it. Amendments should be made only if all relevant parties agree to them

Detailed definition of different responsibilities

- Defining the different responsibilities of all partners is part of the transparency of the cooperation between governmental and non-governmental organizations

Adapted from *National Referral Mechanisms: Joining Efforts to Protect the Rights of Trafficked Persons* (Warsaw, Organization for Security and Cooperation in Europe, 2004), available from www.osce.org/publications/odihr/2004/05/12351_131_en.pdf.

Recommended resources

Planitzer, Julia. *Guiding Principles on Memoranda of Understanding Between Key Stakeholders and Law Enforcement Agencies on Counter-Trafficking Cooperation*. Vienna: International Organization for Migration, 2009.

Although this resource is aimed at strengthening the multiagency response to human trafficking, there are several lessons that can be derived from it for the purpose of strengthening the response to the smuggling of migrants.

These guiding principles are intended to serve as a practical tool that will help stakeholders when developing counter-trafficking agreements. Stakeholders are understood to be all actors that play a role in combating and preventing human trafficking, from law enforcement agencies to specialized service providers, non-governmental organizations, trade unions, the judiciary, the prosecution services, faith-based organizations, etc.

The principles are a set of recommendations that lead States and stakeholders through the necessary steps for developing and implementing a formalized cooperative relationship, whether through memorandums of understanding or other cooperation agreements.

www.ungift.org/docs/ungift/pdf/humantrafficking/Guiding_Principles_annexe.pdf

United Nations Development Programme. *UNDP and Civil Society Organizations: A Toolkit for Strengthening Partnerships.* New York, 2006.

The Toolkit is aimed at strengthening the relationship between the United Nations Development Programme (UNDP) and civil society organizations. It defines civil society organizations and presents a methodology and operational information for working with them, including policy implementation, contracts, grants and partnership agreements. Though primarily designed for use by UNDP staff, the Toolkit is a valuable resource both for individuals or entities working with civil society organizations, and for civil society organizations themselves.

The Toolkit is available from www.undp.org/partners/civil_society/publications/CSO_Toolkit_linked.pdf.

Promising practices

See subsections 4.13, 4.14 and 4.15.

4.9 Developing inter-agency coordination mechanisms

Inter-agency collaboration is a prerequisite for the success of any national or local strategy to prevent and combat the smuggling of migrants. Coordination mechanisms should be able to elaborate and implement anti-smuggling policies, monitor their implementation, coordinate the actions of all relevant actors at the national level and facilitate international cooperation. Their role should not be restricted to the prosecution of offenders, but should also encompass the development and coordination of measures to assist and protect smuggled migrants.

Successful cooperation mechanisms are based on a clear definition of the respective roles of the various agencies involved. When developing such coordination mechanisms, it is very important to clarify the role of each of the key agencies involved in implementing a comprehensive strategy, whether national or local.

Recommended resource

United Kingdom, Home Office. *Crime Reduction Toolkit on Trafficking of People*. London. Multiagency coordination or management groups need to ensure that the specific roles and responsibilities of the different agencies are agreed upon and understood by all involved. Equally, the issues of leadership and accountability need to be addressed from the outset.

For a concrete example, one may consult the lists of the specific roles and responsibilities of various agencies developed in the United Kingdom to support the development of local frameworks. It is clear that local situations will determine what can be done and who is best positioned to do it. This Toolkit offers a series of checklists of the contributions that different agencies and groups may be able to make. These (or similar checklists) can be reviewed and used to assist the making of decisions on who actually does what locally. The scale and nature of the local problem, the mandate of the organizations, existing expertise and the resources available will influence such decisions.

www.crimereduction.homeoffice.gov.uk/toolkits/tp00.htm

Promising practices

See subsections 4.13, 4.14 and 4.15.

4.10 National action plans and strategies

Australian strategy to combat people smuggling

As part of its budget for 2009-2010, the Australian Government funded a whole-of-Government (multiagency) strategy costing 654 million Australian dollars to combat the smuggling of migrants and address the problem of unauthorized boat arrivals.

This strategy includes the largest surveillance and detection operation against the smuggling of migrants in Australian history. The funding was allocated as follows:

- $A324 million funding to increase maritime patrol and surveillance, including an additional maritime surveillance craft in Australia's northern waters and increased maritime surveillance time
- A funding increase of almost $A63 million for aerial surveillance (two additional surveillance aircraft)
- About $A93 million to strengthen engagement with regional neighbours and international organizations
- $A13.6 million to strengthen legal and prosecution capacity and enhance regional cooperation with regard to laws on smuggling of migrants

The Australian Government has also established a dedicated Border Protection Committee of Cabinet, supported by the newly established Border Protection Taskforce, to drive the Government's response to smuggling of migrants.

www.ag.gov.au/www/agd/agd.nsf/Page/Publications_Budgets_Budget2009_MediaReleases_$1.3BilliontoCombatPeopleSmugglingandStrengthenAustraliasNationalSecurity

United States of America national anti-smuggling strategy

The United States Immigration and Customs Enforcement (ICE) was established in 2003, prior to which, many of its functions were performed by the United States Customs Service (Treasury), Immigration and Naturalization Service (Justice) and Federal Protective Service. With regard to the smuggling of migrants, ICE applies various tools, resources and initiatives to identify smugglers and dismantle the related criminal infrastructure.

www.ice.gov/index.htm

4.11 Regional action plans and strategies

African Union Migration Policy Framework for Africa

This Migration Policy Framework provides policy guidelines on the following thematic issues:

- Labour migration
- Border management
- Irregular migration
- Forced displacement
- Human rights of migrants
- Internal migration
- Migration data
- Migration and development
- Inter-State cooperation and partnerships

It is available at www.africa-union.org/root/au/Conferences/Past/2006/November/SA/EU/EXCL276(IX)_Strategic_Framework_for_Policy_Migration.doc.

Draft African Common Position on Migration and Development

This was drafted and adopted by the African Union at the Experts' Meeting on Migration and Development that took place in Algiers from 3 to 5 April 2006. It includes the following recommendations for combating the smuggling of migrants:

- Strengthen the mechanisms to combat the smuggling of migrants and trafficking in persons, including through the elaboration of legal instruments
- Introduce measures including legal frameworks to fight illegal migration and punish those guilty of smuggling or trafficking in persons

www.africa-union.org/root/au/Conferences/Past/2006/April/SA/Apr5/Draft%20AFRICAN%20COMMON%20POSITION%20ON%20MIGRATION%20AND%20DEVELOPMENT%20-final-5%20April2006.pdf

Black Sea Economic Cooperation Action Plan on Cooperation in Combating Crime, in Particular in its Organized Forms (May 2007 to April 2009)

The Black Sea Economic Cooperation was formed in 1992 by 11 Governments to foster peace, stability and prosperity among member States. In the Action Plan, members make a commitment to participating in specific regional seminars and training courses on trafficking in persons. The Action Plan also provides for the possibility of enhancing cooperation with other international organizations.

It is available from www.bsec-organization.org/aoc/coooeration/Pages/ActionP.aspx.

Communication from the European Commission on policy priorities in the fight against illegal immigration of third-country nationals

This Communication forms an integral part of the comprehensive and structural approach of the European Union towards effective migration management. The policy priorities outlined in the Communication relate to the following topics:

- Cooperation with third countries
- Secure borders and integrated management of external borders
- Fight against trafficking in persons
- Secure travel and identification documents
- Addressing regularizations
- Tackling a key pull factor: illegal employment
- Return policy
- Improving exchange of information through existing instruments
- Carriers' liability

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2006&nu_doc=402

Council of Europe Parliamentary Assembly resolution 1521 (2006) on mass arrival of irregular migrants on Europe's southern shores

In response to growing concern across Europe at the number of irregular migrants and asylum-seekers arriving on its southern shores, the Parliamentary Assembly of the Council of Europe adopted this resolution, which covers a range of issues on migration flows and related humanitarian and human rights problems.

Paragraph 13 of the resolution urges member States to:

- Examine the root causes of migration
- Provide financial and other support for countries of origin of migrants in order to tackle many of the root causes of migration
- Collect and exchange data on migration movements (country of origin information, transport routes, smuggling and trafficking networks, etc.)
- Provide greater transparency with regard to the number and origin of persons arriving as irregular migrants or asylum-seekers and also provide statistics on the number that are repatriated, detained or released
- Establish adequate identification mechanisms to determine the nationality of arrivals
- Address secondary movements of migrants and asylum-seekers and refugees within member States, taking into account the rights of the persons concerned
- Conclude readmission agreements with countries of origin and transit of irregular migrants
- Promote information strategies for countries of origin, transit and destination, highlighting the dangers involved in irregular migration and explaining the options and possibilities for legal migration

Paragraph 14 encourages member States to share the burden of these mass arrivals by:

- Contributing to the different air and sea patrols being put into place by the European Agency Frontex
- Contributing to rapid reaction forces being set up to deal with mass arrivals (border officials, interpreters, medical officers, etc.) and including experts on asylum and human rights issues in these teams to ensure that persons in need of international protection are identified
- Contributing to the humanitarian and material needs of persons arriving (including the provision of portable accommodation, food, medicine, etc.)
- Contributing to the cost of processing and, where appropriate, returning irregular migrants
- Agreeing to take in persons arriving or settle those in need of international protection, in particular to alleviate the pressure on countries such as Malta with large numbers of arrivals

Paragraph 15 states that the issue cannot be looked at only from a migration management angle, as there are significant humanitarian and human rights concerns in relation to the arrival, stay and possible return of irregular migrants and asylum-seekers.

Paragraph 16 calls on member States to:

- Protect the right to life, refrain from using unreasonable force on those seeking to enter Europe and rescue those whose life may be in danger
- Respect the right to human dignity by providing adequate reception conditions covering accommodation, health care and other basic needs
- Provide a hearing, with an interpreter if necessary, to anyone whose right of entry is disputed in order to allow them to explain the reasons for entering the country and to lodge an application for asylum if appropriate
- Use detention only as a last resort and not for an excessive period. Irregular migrants should be held in special detention facilities and not with convicted prisoners. Children should not be detained, unless this is unavoidable. In such cases it must be for the shortest possible time. The same applies for other vulnerable persons, including victims of torture, pregnant women and the elderly
- Provide detainees with the right to contact anyone of their choice (lawyer, family members, a non-governmental organization, UNHCR, consular services, etc.)
- Ensure that detention is judicially authorized and that there is an independent judicial review of the lawfulness and need for continued detention. Detainees should be expressly informed, without delay and in a language they understand, of their rights and the procedures applicable to them
- Guarantee freedom from torture, inhuman or degrading treatment or punishment, including in the return process

- Guarantee non-refoulement and the right to asylum
- Prohibit the collective expulsion of aliens
- Provide an effective remedy before an independent and impartial authority, with a suspensive effect when a returnee has an arguable claim that he or she would be subjected to treatment contrary to his or her human rights if returned
- Pay particular attention to the needs of unaccompanied and separated minors, pregnant women, the elderly, the disabled, victims of torture or of trafficking and others in a vulnerable situation
- Ensure that unaccompanied minors have effective access to available protection mechanisms, including asylum procedures

Paragraph 17 calls on member States to:

- Provide all persons arriving with information on their rights and responsibilities
- Register persons arriving and provide them with temporary documentation
- Establish transparent mechanisms to determine their nationality
- Allow access by UNHCR, IOM and humanitarian and other non-governmental organizations to all places where persons arriving may be detained
- Support voluntary return programmes for irregular migrants and carry out forcible returns only in accordance with the 20 guidelines on forced return adopted by the Council of Europe's Committee of Ministers in May 2005

Paragraph 18 encourages the European Parliament's Committee on Civil Liberties, Justice and Home Affairs to continue its programme of visits to places where mass arrivals are taking place in order to provide greater visibility on the plight of persons arriving and the challenges faced by the authorities concerned.

In paragraph 19, the Parliamentary Assembly invites the Council of Europe Human Rights Commissioner to pay particular attention, in the preparation of his country reports, to human rights issues posed by the arrival, stay and return of irregular migrants and asylum-seekers arriving on Europe's shores.

In paragraph 20, the Parliamentary Assembly considers that closer and prompter cooperation is required between all key actors (governmental, non-governmental and intergovernmental) when mass arrivals take place, and recommends that structures for cooperation be set up immediately in preparation for the arrivals that would take place in 2007.

In paragraph 21, the Parliamentary Assembly encourages its Committee on Migration, Refugees and Population to step up its work on mass arrivals, making full use of its ad hoc subcommittee on unexpected large-scale arrival of migrants and asylum-seekers.

In paragraph 22, the Parliamentary Assembly also encourages its Committee on Migration, Refugees and Population to examine, in the context of its work, the problems in negotiating and implementing readmission agreements, as well as the steps that have to be taken to tackle the illegal criminal networks responsible for the trafficking and smuggling of irregular migrants.

In paragraph 23, the Parliamentary Assembly proposes returning to the issue of mass arrival of irregular migrants on Europe's southern shores following a more in-depth analysis of the problems faced and solutions available.

The resolution is available from http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta06/ERES1521.htm.

Economic Community of West African States Common Approach on Migration

The Economic Community of West African States (ECOWAS) Common Approach on Migration was approved in January 2008.

It identifies six key areas:

- Free movement of persons within the ECOWAS zone
- Management of legal migration
- Combating human trafficking
- Harmonizing policies
- Protection of the rights of migrants, asylum-seekers and refugees
- Recognizing the gender dimension of migration

More information is available from www.oecd.org/document/7/0,3343,en_38233741_38246954_38483911_1_1_1_1,00.html#issues.

European Union Annual Action Programme 2009 and 2010 (part 1) for the Thematic Programme of Cooperation with Third Countries in the Areas of Migration and Asylum

This Action Programme is aimed at:

- Fostering the links between migration and development
- Promoting well-managed labour migration
- Fighting illegal immigration and facilitating the readmission of illegal immigrants
- Protecting migrants against exploitation and exclusion and supporting the fight against trafficking in human beings
- Promoting asylum, international protection and the protection of stateless persons

The objective is to implement the Thematic Programme of Cooperation with Third Countries in the Areas of Migration and Asylum through capacity-building, information and awareness-raising and cooperation activities in which partners in countries of origin, transit and destination develop actions and share experience, best practices and working methods on the various aspects of migration.

The European Union Annual Action Programme for 2009 and 2010 is available from http://ec.europa.eu/europeaid/documents/aap/2009/ec_aap-2009_dci-migration-asylum_en.pdf.

Further information on free movement of persons, asylum and immigration within the European Union is available at: http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration.

European Union Vienna Action Plan

This Action Plan states that criminal behaviour should be dealt with in an equally efficient way throughout the European Union and should be pursued with the same vigour wherever it takes place. If serious criminal conduct receives an equivalent response and procedural guarantees are comparable throughout the European Union, the possibilities of improving coordination of prosecution, whenever greater efficiency can be reconciled with respect for individual rights, must be examined. This goes in particular for policy areas where the Union has already developed common policies with strong cross-border implications

It is available from http://ec.europa.eu/justice_home/doc_centre/crime/doc_crime_intro_en.htm.

Migration Management in Central and South-Eastern Europe. IOM Strategy and Objectives 2006-2007

This strategy document outlines the approach of IOM in Central and South-Eastern Europe, in response to the latest migration trends and political and socio-economic developments in the countries under study. It takes into consideration the European Union membership of the Czech Republic, Hungary, Poland, Slovakia and Slovenia and the membership prospects of the Balkan countries, as well as their need for progressive alignment with the European Union migration acquis.

The strategy document places special emphasis on promoting regional, subregional and cross-border cooperation between the countries of Central and South-Eastern Europe. It considers the overall framework of the cooperation objectives of IOM in the region and its regional policy agenda, which focuses on current political, economic and social issues. After outlining the regional strategy, the document takes a closer look at the individual approaches and policies for the 13 countries of the Central and South-Eastern European region.

http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=139

Plan of Action of the Regional Conference on Migration

The Regional Conference on Migration (formerly known as the Puebla Process) is a multilateral regional forum on international migration that includes representation from all Central American countries, Canada, the Dominican Republic, Mexico and the United States of America. The group was established in 1996 to improve communication on migration issues among immigration and foreign policy officials in the region. It has a Plan of Action, updated in November 2009, that includes the following objectives:

- Implementation of national migration policies
- Identification of norms relating to migration documents
- Strengthening cooperation to combat the smuggling of migrants and trafficking in persons
- Awareness-raising about the negative impact of smuggling of migrants and trafficking in persons
- Strengthening coordination between Governments and international organizations on return of migrants

- Developing a regional strategy to facilitate the safe, dignified and orderly return of migrants
- Technical cooperation for reintegration of returned migrants
- Promotion of linkages with other regional and international consultation processes on migration

It is available from www.rcmvs.org/plande.htm.

Summits of the Americas Declaration on migration, including plan of action to criminalize the smuggling of migrants

The Summits of the Americas bring together the Heads of State and Government of the western hemisphere to discuss common concerns, seek solutions and develop a shared vision for the future economic, social and political development of the region.

The Summits of the Americas have committed to dialogue in order to reduce the cost of and facilitate remittances; increase efforts to combat the smuggling of migrants and trafficking in persons; provide for the dignified, orderly, and safe return of migrants; and invite States to exchange best practices on establishing bilateral programmes for migrant workers.

The Declaration includes a plan of action on criminalizing the smuggling of migrants and trafficking in persons; effectively enforcing national laws and regulations to confront the smuggling of migrants and trafficking in persons; strengthening institutions; and improving the training of professional staff so that they can investigate and prosecute the responsible parties, undertake prevention initiatives, and protect and assist the victims of these crimes.

The Declaration and plan of action are available from www.summit-americas.org/sisca/mig.html.

2004 United States—Mexico Action Plan for Cooperation and Border Safety

Mexico and the United States have endorsed the implementation of a set of measures on border safety and security to strengthen the protection of Mexican migrants at the border and combat organized crime linked to the smuggling of migrants and human trafficking. The principal goal of the Action Plan is to update and strengthen institutional efforts and to establish new courses of action where needed. The following actions are planned to that end:

- Enhancing existing media information and prevention programmes
- Combating the smuggling of migrants and trafficking in persons
- Combating border violence
- Intensifying public outreach to prevent migrants crossing the border in high-risk areas
- Coordinating responses to border emergencies
- Ensuring secure and orderly repatriations of Mexican nationals
- Exploring mechanisms, on a bilateral basis, to repatriate Mexican nationals
- Strengthening consultation mechanisms between Mexican consuls and the United States Department of Homeland Security
- Strengthening border liaison mechanisms

www.migracioninternacional.com/docum/indice.html?mundo=usmexplanseg2004.html

Recommended resource

Mixed Migration Task Force. *Mixed Migration through Somalia and across the Gulf of Aden*. 2008.

This strategy paper is based on a study completed in January 2008, which was commissioned by the Mixed Migration Task Force Somalia in order to improve understanding of the complex migration flow through Somalia to Yemen. The paper outlines the dynamics of the process and challenges encountered along the migration routes, on the hazardous sea journey to Yemen and upon arrival in Yemen. It provides recommendations for a strategy to address these challenges that are built around the evident need to improve coordination, policymaking and analysis at the regional level. It recommends an expansion of coordinated humanitarian interventions in order to address the current limitations to human rights protection for migrants and refugees, including engaging with and capacity-building of national and regional authorities and addressing the economic causes of this phenomenon.

It is available from www.unhcr.org/4877716c2.html.

4.12 Interregional and international action plans and strategies

Africa-European Union strategic partnership

The Joint Africa-EU Strategy provides a long-term framework for Africa-European Union relations. Its first action plan specifies concrete proposals for 2008-2010, which come under strategic partnerships in the following areas:

- Peace and security
- Democratic governance and human rights
- Trade, regional integration and infrastructure
- Millennium Development Goals
- Energy
- Climate change
- Migration, mobility and employment
- Science, information society and space

The strategic partnership on migration, mobility and employment has three priority actions:

- Implement the declaration of the Tripoli Ministerial Conference on Migration and Development
- Implement the EU-Africa Plan of Action on Trafficking of Human Beings
- Implement and follow up the 2004 Ouagadougou Declaration and Action Plan on Employment and Poverty Alleviation in Africa

Among the objectives of the strategic partnership are:

- Facilitating mobility and free movement of people in Africa and the European Union and better managing legal migration between the two continents
- Addressing the root causes of migration and refugee flows
- Finding concrete solutions to problems posed by illegal or irregular migratory flows
- Addressing the problems of migrants residing in European Union and African countries
- Effectively combating trafficking in human beings through a victim-centred approach, in particular of women and children
- Addressing the root causes of trafficking in human beings in countries of origin, as well as in countries of destination
- Contributing to the empowerment of women and children

European Commission. *One year after Lisbon: the Africa-EU partnership at work*. Brussels, 2008.

This communication reviews the progress made during the first year of implementation of the joint strategy. It confirms the change in Europe's relations with Africa and aims to stimulate debate among stakeholders on both continents (member States, regional bodies, parliaments, civil society and international partners) on the results achieved so far for each of the eight partnerships, and a way forward.

For more information, visit http://ec.europa.eu/development/geographical/regionscountries/euafrica_en.cfm.

Also see the European Commission/Council Secretariat Joint Paper, *Beyond Lisbon: Making the EU-Africa Strategic Partnership Work* (Brussels, 2007). Available from http://eur-lex.europa.eu/LexUriServ/site/en/com/2007/com2007_0357en01_02.pdf.

Global Approach to Migration

The Global Approach to Migration can be defined as the external dimension of the migration policy of the European Union (EU). It is based on genuine partnership with third countries, is fully integrated into other EU external policies and addresses all migration and asylum issues in a comprehensive and balanced manner. Adopted in 2005, it illustrates the ambition of EU to establish an intersectoral framework to manage migration in a coherent way through political dialogue and close practical cooperation with third countries.

The Global Approach reflects a major change in the external dimension of European migration policy over recent years, namely, the shift from a primarily security-centred approach, focused on reducing migratory pressures, to a more transparent and balanced approach that is guided by a better understanding of all aspects relevant to migration.

EU has built the multidimensional character of the Global Approach on a thematic basis, covering legal migration and mobility, irregular immigration, and migration and development. Many concrete actions on the ground preceded the Global Approach, although many of them tended to be done in isolation. However, the very nature of the Global Approach points to the need to combine more systematically action by EU, EU member States and third countries or other players in the various thematic fields.

To counteract smuggling of and trafficking in human beings, EU supports and promotes the ratification and implementation of international instruments, the drafting and implementation of national anti-trafficking action plans, legislative improvements, the prevention of smuggling of and trafficking in human beings, and the reintegration and rehabilitation of victims. The Ouagadougou Action Plan of November 2006 (now a part of the EU-Africa Partnership on Migration, Mobility and Employment) has created new prospects for cooperation between the European Union and Africa in this area.

The European Commission proposes to:

- Acquire and provide timely and updated information on changes in migratory routes towards EU by promoting reliable comparable data to be collected in both sending and destination countries, exploring new scientific methodologies and making full use of new technologies, such as the electronic mapping system

- Provide assistance to key third countries to strengthen their migration management, e.g. by sharing experiences on border control issues, training border guards and exchanging operational information
- Support third countries in the adoption and implementation of national integrated border management strategies, in line with EU standards
- Support local organizations that encourage potential migrants to stay and help them to find opportunities in their home countries
- Intensify, with the active involvement of origin and transit countries, particularly in the European Neighbourhood Policy context, joint operations and cooperation in setting up a border surveillance infrastructure under the European Border Surveillance System
- While placing the readmission policy more firmly within the Global Approach and its priorities and using the potential of mobility partnerships, intensify efforts on readmission agreements between EU and the main countries of origin and transit, make sure that third countries meet their obligations to readmit persons staying illegally in EU, including where applicable under the Cotonou Agreement, and recognize documents facilitating the return of undocumented migrants, as well as offering the necessary assistance for such readmissions. Ensure through training, exchange of best practices and coaching that all return operations are conducted with dignity and in line with human rights standards, and increase cooperation to secure the sustainability of such returns
- Encourage third countries to ratify and implement international instruments related to the fight against the smuggling of migrants and trafficking in human beings
- Strengthen, at the global level, cooperation with international organizations, in particular the United Nations, in fighting human trafficking
- Encourage due attention to the issue of human trafficking in political and cooperation dialogue with partner countries and regional organizations
- Give priority to the implementation of the Ouagadougou Action Plan, support regional organizations in developing anti-trafficking strategies and action plans and ensure that existing ones are put into effect

More information on the Global Approach to Migration is available at http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/549&format=HTML&aged=1&language=EN&guiLanguage=en.

Source: Communication on Strengthening the Global Approach to Migration. Available from http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0611:FIN:EN:PDF.

Joint Africa-EU Declaration on Migration and Development

Signatories to this 2006 Declaration agreed that illegal migration puts lives at risk and undermines national policies on migration. In recognition of this, African and European Union States reaffirmed that the control of illegal migration must be pursued together in a cooperative and comprehensive way, and that all countries have a duty to cooperate fully to ensure return in a humane and orderly manner.

In this context, the Declaration addresses issues of:

- Migration management challenges
- Peace and security
- Migration and development
- Brain drain
- Concern for human rights and the well-being of the individual
- Sharing best practices
- Legal migration opportunities
- Illegal migration
- Protection of refugees

The full Declaration can be accessed at www.africa-union.org/root/au/Conferences/Past/2006/November/SA/EU/joint_declaration.doc.

European Union/Georgia Action Plan

This is a political document laying out the strategic objectives of the cooperation between Georgia and the European Union. One of its stated key priorities is to enhance cooperation in the areas of justice, freedom and security, including border management, by taking specific action on border and migration management, including readmission, visas and asylum issues.

http://ec.europa.eu/world/enp/pdf/action_plans/georgia_enp_ap_final_en.pdf

Plan of Action for the Implementation of the Brussels Declaration on Asylum, Migration and Mobility

This Plan of Action was adopted by the ministers from the African, Caribbean and Pacific Group of States in charge of asylum, migration and mobility on 13 April 2006. It includes commitments to:

- Fight smuggling of persons and other related transnational criminal activities
- Employ special surveillance methods along borders to target networks involved in smuggling of migrants, and provide protection to people who have been smuggled
- Ensure cooperation between countries concerning information regarding the deportation of nationals of African, Caribbean and Pacific States
- Formulate specific requests for financing national and regional awareness campaigns (through both traditional media and new information technologies) that target women and children in particular
- Develop specific training programmes for all services concerned with the smuggling of persons
- Submit specific requests to the European Union and other development partners so as to provide assistance to transit countries for the management of irregular migration, while respecting rights of migrants

The Plan of Action is available from www.acpsec.org/en/pahd/ACP2802606PlanActionMigrationEN.pdf.

Rabat Action Plan, Euro-Africa Ministerial Conference on Migration and Development, July 2006

The third section of this Action Plan is on illegal immigration and emphasizes the need for cooperation at all stages of the response to illegal migration and reinforcement of border security.

Cooperation in the fight against illegal immigration

- Cooperating logistically and financially for the voluntary return of migrants in transit countries
- Setting up, while respecting human dignity and the fundamental rights of people, efficient readmission systems between all countries concerned, in particular through the effective implementation of the relevant provisions of article 13 of the Cotonou Agreement and the conclusion of the readmission Agreements between, on the one hand, North, West and Central African countries and, on the other hand, the European Union or one of its member States and North, West and Central African countries
- Technical and logistical support for identifying illegal migrants' nationality
- Facilitating the reintegration of irregular migrants who have returned to their home country
- Launching information campaigns to make potential migrants aware of the risks of illegal immigration
- Making financial resources available to support transit and origin countries facing emergency situations concerning illegal migration

Reinforcement of the national border control capacity of countries of transit and departure

- Improving the training of relevant services and the equipment used in transborder operational cooperation
- Cooperating to provide relevant countries with a computerized database that can be used to efficiently combat irregular migration
- Cooperating to put an early warning system in place, inspired by the European model, in order to allow the immediate transmission of signals warning of potential clandestine immigration, as well as activities of smugglers' organizations

The Action Plan is available from www.maec.gov.ma/migration/Doc/PA%20final%20EN.pdf.

4.13 National coordination mechanisms and institutions

Australia

Joint Australian Federal Police and Department of Immigration and Citizenship People Smuggling Strike Team

This team was established in May 2000. It provides a centrally directed, highly mobile investigative capability against organized people-smuggling syndicates operating in Australia and overseas. The team consists of investigators and intelligence and financial analysts.

Technological advances, including the widespread availability of fraudulent documentation, have prompted a maturing of the criminal activities undertaken by smugglers of persons. There is a greater awareness of policing abilities and methodology, and preparatory and overt acts are being conducted in more than one jurisdiction. It has become apparent that smugglers of persons are acting regionally rather than in just one country; therefore, it is imperative that capacity-building and intelligence-sharing opportunities be pursued in source and transit countries across the region.

Since 29 September 2008, there has been an increase in persons smuggled into Australia. These migrants are predominately of Afghan, Iranian, Iraqi and Sri Lankan origin.

To combat this increase, the Australian Federal Police have generated a law enforcement programme founded on three pillars: prosecution, disruption and capacity-building. The prosecution strategy relies on foreign and Australian prosecution of smugglers of persons; the disruption strategy consists of providing actionable intelligence to inform foreign law enforcement action and prevent maritime ventures before they depart for Australia; and the capacity-building strategy is focused on enhancing the capacity of the Indonesian National Police and other law enforcement agencies across the region, including in Malaysia, Pakistan and Sri Lanka.

www.afp.gov.au/national/people_smuggling.html

Whole-of-Government role

The Australian Federal Police have a pivotal place in a number of newly formed inter-governmental forums that provide high-level guidance for operations and policy responses to unauthorized arrivals by boat to Australia. Other members of these forums include:

- Department of Immigration and Citizenship
- Department of the Prime Minister and Cabinet
- Australian Customs and Border Protection Service
- Department of Foreign Affairs and Trade, including the Ambassador for People Smuggling Issues

- Australian intelligence community
- Attorney-General's Department

www.afp.gov.au/national/people_smuggling.html

Ambassador for People Smuggling Issues

The Australian Government appointed a full-time Ambassador for People Smuggling Issues in recognition of the significant challenges that Australia faces as a result of the difficult conditions in source locations such as Afghanistan, the Afghanistan-Pakistan border area and Sri Lanka.

The Ambassador is responsible for high-level advocacy of Australia's interests in promoting effective and practical international cooperation to combat the smuggling of migrants and trafficking in persons, particularly in the Asia-Pacific region.

The Ambassador promotes a coordinated, whole-of-Government approach to Australian policies and works closely with foreign Governments and international organizations to implement measures that deliver practical benefits to regional operational agencies to combat the smuggling of migrants and trafficking in persons.

www.dfat.gov.au/homs/aups.html

Germany

Joint Analysis and Strategy Centre for Illegal Migration

Gemeinsames Analyse—und Strategiezentrum illegale Migration (GASIM) was established in 2006 with the aim of enhancing the State response to illegal migration by providing an institutionalized cooperation mechanism involving all relevant players at the federal level (the states (Länder) are involved on a case-by-case basis). GASIM is composed of representatives of:

- Federal Office for Migration and Refugees (Bundesamt fuer Migration und Fluechtlinge)
- Federal Intelligence Service (Bundesnachrichtendienst, which only operates abroad)
- Federal Police (Bundespolizei, former Bundesgrenzschutz, which is responsible for policing borders)
- Foreign Office (Auswaertiges Amt)
- Federal Criminal Police Office (Bundes Kriminal Amt)
- Financial Control of Illegal Labour (Finanzkontrolle Schwarzarbeit)
- Federal Office for the Protection of the Constitution (Verfassungsschutz, the intelligence service that operates only in Germany)

The mandate of GASIM is to provide analysis of all information on illegal migration, in particular with regard to its links with general crime, organized crime, terrorism, illegal employment and abuse of social benefits; an early warning function; situation reports; and policy advice. GASIM operates mainly through thematic forums that bring together relevant representatives. The forums are convened on a regular basis and include:

- A daily briefing forum
- A forum to analyse migration flows
- A forum to analyse trends and challenges with regard to illegal migration and illegal labour
- A forum to share intelligence and provide strategic analysis (on trends in modus operandi and involvement of organized crime)
- A forum to analyse policies of the different agencies, identify gaps and overlaps, and provide recommendations
- A forum to analyse operational measures against illegal migration

More information is available from www.bmi.bund.de/SharedDocs/Pressemitteilungen/EN/2006/07/joint_center_for_illegal_migration_analysis.html?nn=109632&nsc=true.

Netherlands

Expert Centre on Trafficking Human Beings and Human Smuggling

The aim of the Expertisecentrum Mensenhandel en Mensensmokkel (EMM) is to improve cooperation, communication and exchange of information and to make preliminary inquiries into trafficking in persons and the smuggling of migrants.

Its mission is to provide an insight into and an overview of trafficking in persons and the smuggling of migrants, for the purpose of detecting and preventing them and related crimes. It is a central point at which information, knowledge and experience are collected, processed and used.

The Centre brings together experts from the National Police Criminal Investigation Service, military border police, regional police forces, the Immigration and Naturalization Service and the Social Information and Investigation Service.

For more information, visit www.postbus51.nl/nl/home/adressen/ministerie-justitie/adres-expertisecentrum-mensenhandel-en-mensensmokkel-emm.html.

Switzerland

Swiss Coordination Unit against Trafficking in Persons and Smuggling of Migrants and its Permanent Secretariat

The Koordinationsstelle gegen Menschenhandel und Menschenschmuggel (KSMM) provides the structures and fosters the networks necessary for fighting trafficking in persons and the smuggling of migrants effectively, ensuring that procedures throughout Switzerland are coordinated. It also develops strategies and measures to combat this form of crime.

KSMM is committed to implementing the two supplementary Protocols to the United Nations Organized Crime Convention.

The authorities and organizations involved in fighting trafficking in persons and smuggling of migrants work together in KSMM: it comprises a Steering Committee, a Permanent Secretariat at the Federal Office of Police, and expert and working groups that provide information and carry out projects.

The Steering Committee formulates the basic principles for fighting human trafficking and the smuggling of migrants and determines priorities in a national action plan.

The Permanent Secretariat at the Federal Office of Police is the central contact office for enquiries from Switzerland and abroad on trafficking in persons and the smuggling of migrants. The Secretariat ensures the flow of information between all KSMM members, coordinates the participation of federal authorities in national and international committees and provides support in public relations work. It compiles and coordinates analyses, statements and reports.

Under the leadership of the Permanent Secretariat, the expert groups and other special working groups develop instruments and measures for fighting trafficking in persons and smuggling of migrants more efficiently. They also exchange information for the purpose of developing plans and strategies that serve as a basis for the political decision-making process.

The tasks of KSMM are strategic rather than operational. Its work is aimed at improving the basis for combating trafficking in persons and smuggling of migrants in Switzerland, but it is not involved in criminal proceedings or investigations. That is the task of the Human Trafficking and Smuggling of Migrants Section of the Federal Criminal Police, which provides support to the cantonal prosecution authorities in their investigations.

www.ksmm.admin.ch/ksmm/en/home/die_ksmm/ziel_und_struktur.html

United States of America

Human Smuggling and Trafficking Center (HSTC)

This Center was formally established under the Intelligence Reform Act and Terrorism Prevention Act of 2004. The Secretary of State, the Secretary of the Department of Homeland Security, the Attorney General and members of the national intelligence community jointly oversee HSTC through a high-level inter-agency steering group.

HSTC was established to achieve greater integration and overall effectiveness in efforts by the United States Government to combat the smuggling of migrants, trafficking in persons and clandestine terrorist travel. HSTC coordinates activities with foreign Governments to ensure that efforts are addressed globally. It brings together experts from the policy, law enforcement, intelligence and diplomatic arenas to work together and use their knowledge, expertise and authority to address the global threat of illicit travel. HSTC is a support organization and does not have directive authority. It has four main functional areas:

- Facilitating the broad dissemination of all source information by integrating and disseminating raw and finished tactical, operational and strategic intelligence and information to member agencies, policymakers and appropriate foreign partners. This intelligence provides the basis for criminal investigations as well as interceptions of smuggled persons
- Preparing strategic assessments related to important aspects of smuggling of and trafficking in persons and clandestine terrorist travel. Assessment topics may include global smuggling and trafficking organizations and networks; the extent of progress in dismantling organizations; smuggling and trafficking schemes, patterns and trends; and proven law enforcement and other approaches for countering smuggling and trafficking. HSTC produces intelligence bulletins, reports and notes, longer analysis

products and target packages about smuggling organizations and networks, which are provided to appropriate United States agencies for action. The strategic assessments provide policymakers with accurate, objective analyses of threats, vulnerabilities and opportunities for action

- Identifying issues for inter-agency coordination or action related to the smuggling of migrants or trafficking in persons. These issues and initiatives can be either domestic or foreign
- Coordinating select initiatives and providing other support for domestic and international anti-smuggling or trafficking initiatives. These initiatives may include bilateral or multilateral activities against smuggling networks, and support can include intelligence support for law enforcement

More information about HSTC is available from www.state.gov/p/inl/c14079.htm.

4.14 Regional coordination mechanisms and institutions

Regional consultative processes are informal, State-led forums that provide a variety of functions on specific issues. Their aims may include sharing information, experiences and good practices between countries to foster cooperation on various issues at the regional level. This subsection gives examples of such regional cooperation—or regional consultative processes—on the topic of the smuggling of migrants.

Bali Process

The Bali Process brings participants together to work on practical measures to help combat smuggling of and trafficking in persons and related transnational crimes in the Asia-Pacific region and beyond. Initiated at the Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, held in Bali in February 2002, the Bali Process follow-up is a collaborative effort in which over 50 countries and numerous international agencies participate. The Bali Process is co-chaired by the Governments of Indonesia and Australia, and two country coordinators lead follow-up activities in two thematic areas:

- Thailand: regional and international cooperation on policy issues and law enforcement
- New Zealand: regional and international cooperation on policy issues and legal frameworks

The Bali Process Steering Group (comprising the Governments of Australia, Indonesia, New Zealand and Thailand, as well as IOM and UNHCR) guide the monitoring and implementation of activities in these areas. Financial contributions are provided by Australia, Japan, New Zealand and the United States of America, as well as numerous other participating countries.

Combating the smuggling of migrants is one of the key thematic priorities of the Bali Process; specific objectives to that end are the strengthening of regional policy and law enforcement cooperation to address trafficking in persons and smuggling of migrants, and the criminalization of both crimes through the adoption of national legislation.

www.baliprocess.net

Budapest Process

The Budapest Process is a consultative forum of more than 50 Governments and 10 international organizations that aims to develop comprehensive and sustainable systems for orderly migration. It involves States from the wider European region. The Process was initiated by Germany in 1991, when ministers met in Berlin to work on joint measures against the increase

of irregular migration pressures in Europe. Two years later, a second Ministerial Conference in Budapest adopted a further set of recommendations. To ensure the implementation of these recommendations, the Budapest Group of Senior Officials was established under the chairmanship of Hungary. ICMPD was chosen as the Secretariat.

Smuggling of migrants is one of the key areas addressed by the Budapest Process, in addition to regular and irregular migration, asylum, visas, border management, trafficking in human beings and readmission and return. One of the working groups in the Budapest Process specifically addresses the penalty scales for the smuggling of migrants and trafficking in human beings.

www.icmpd.org/fileadmin/ICMPD-Website/Budapest_Process/What_is_the_Budapest_Process_January_2010.pdf

Central American Commission of Migration Directors (Comisión Centroamericana de Directores de Migración)

The Commission was established to address matters relating to the transit of Central American nationals through the region. It makes proposals to improve migration systems and offers technical support to build the capacity of Governments in that respect.

www.oim.or.cr/espanol/ProcesosRegionales/OCAM/OCAM.shtml

Inter-Governmental Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants

The Inter-Governmental Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants (APC) has 33 member States and works in partnership with IOM, UNHCR and the PIDC Secretariat. APC focuses on security-related issues such as smuggling of migrants and trafficking in persons, as well as the movements of refugees and internally displaced persons. The aim of APC is to promote dialogue and greater regional cooperation.

www.apcprocess.net

Inter-Governmental Consultations on Migration, Asylum and Refugees

The 17 member States of the Inter-Governmental Consultations on Migration, Asylum and Refugees (IGC) are Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, the Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, the United Kingdom and the United States of America. It is also a partner of IOM, UNHCR and the European Commission. The main priorities of IGC are the admission of asylum-seekers and refugees, border control and enforcement, and immigration and integration. Smuggling of migrants is one of the themes it addresses.

www.igc.ch

Migration, Asylum, Refugees Regional Initiative Regional Forum

Composed of ministers and senior officials from South-Eastern Europe responsible for migration, asylum, border management, visa and refugee return or settlement, this Regional Forum

focuses on exchanging information, experiences, lessons learned and best practices with the aim of developing a common vision for the region.

www.regionalforum.net/

Migration Dialogue for Southern Africa

The Migration Dialogue for Southern Africa aims to facilitate regional dialogue and cooperation on migration policy issues among the Governments of the Southern African Development Community. Its overall objective is to facilitate regional cooperation in migration management by fostering greater understanding of migration and strengthening regional institutional and personnel capacities.

www.queensu.ca/samp/midsa

Migration Dialogue for West Africa

The Migration Dialogue for West Africa (MIDWA) was specifically designed to encourage the member States of the Economic Community of West African States to discuss common migration issues and concerns for which immediate solutions may not be forthcoming at the national level. MIDWA promotes peace and stability in West Africa, the protection of migrants' rights, and intra- and interregional cooperation.

www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/rcp/MIDWA/MIDWA_Overview_EN.pdf

Ministerial Consultation on Overseas Employment and Contractual Labour for Countries of Origin and Destination in Asia (Abu Dhabi Dialogue)

The 11 member States of the Colombo Process and nine Asian destination countries formed the Abu Dhabi Dialogue. The Abu Dhabi Declaration focuses on developing key partnerships between countries of origin and destination for the development of temporary contractual labour.

www.colomboprocess.org/minis_abudhabi.php

Pacific Immigration Directors' Conference

Pacific Immigration Directors' Conference (PIDC) is a forum for the heads of official immigration agencies of the Pacific region, to meet and discuss issues of mutual interest and foster multilateral cooperation and mutual assistance to strengthen border integrity.

The principal objective of PIDC is to foster cooperation among immigration agencies within the region, for example by sharing information and providing technical assistance. It is coordinated by a permanent secretariat based in Suva. According to the PIDC Charter (of September 2005), its vision is to "provide a focal point for communication, collaboration and cooperation among PIDC members, with the aim of better managing migration flows and strengthening border management across the region, thereby contributing to improved social and economic well-being and security in the Pacific".

PIDC aims to:

- Encourage greater cooperation, communication and liaison between participating agencies, including the development and maintenance of communication between conferences
- Foster a coordinated approach to the implementation of any policies of Forum members having a regional focus
- Coordinate the exchange of technical assistance by and between participating member agencies
- Act as a focal point for collaboration with other regional and international bodies and organizations, such as the Forum Secretariat, the Oceania Customs Organisation, the Pacific Islands Chiefs of Police, INTERPOL, IOM and other relevant United Nations agencies

The 12th PIDC meeting was convened in Brisbane, Australia, in September 2008. Forty delegates participated in the meeting, alongside representatives of international organizations and national customs and border protection authorities. The theme of the meeting was "People on the move".

The 13th PIDC meeting was convened in Sydney, Australia, in October 2009 and was attended by 47 delegates from member States in addition to representatives of international organizations and national customs and border-protection authorities. The theme of the conference was "Focus on the future". In this context, PIDC members endorsed research into trafficking in persons and smuggling of migrants; strengthening information management, training and capacity-building; and increased regional and international cooperation.

www.pidcsec.org

Regional Conference on Migration

The Regional Conference on Migration (RCM) consists of Belize, Canada, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama and the United States of America, with other countries from the region as observers. The three main areas of interest of RCM are migration policy and management; human rights of migrants; and migration and development. One of its priorities is cooperation to combat trafficking in persons and the smuggling of migrants.

www.rcmvs.org

Regional Consultation on Overseas Employment and Contractual Labour for Countries of Origin in Asia (Colombo Process)

The key objective of the Colombo Process is to promote improved management of labour migration. This includes offering protection and services to migrant workers, as well as capacity-building and data collection to meet labour migration challenges and improve inter-State cooperation on labour migration. The 11 member States of the Colombo Process are Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Viet Nam. Technical support is provided to the Colombo Process by IOM, which also serves as its secretariat.

www.colomboprocess.org

Regional consultative process on migration of the Intergovernmental Authority on Development

The six member States of the Intergovernmental Authority on Development (IGAD) are Djibouti, Ethiopia, Kenya, Somalia, the Sudan and Uganda. Several other countries, as well as international organizations, including the African Union Commission and IOM, are involved as members of the IGAD Partners Forum. The IGAD regional consultative process on migration aims to foster greater policy cohesion, strengthen regional capacities to implement the Migration Policy Framework for Africa, and improve intra- and interregional cooperation on migration among countries of origin, transit and destination. One of its priorities is the harmonization of legislation, policy and practices with respect to the smuggling of migrants.

www.iom.ch/jahia/Jahia/policy-research/regional-consultative-processes/snapshots-selected-rcps/igad-rcp

Regional Ministerial Conference on Migration in the Western Mediterranean (5 + 5 Dialogue)

This is an informal dialogue between Algeria, France, Italy, the Libyan Arab Jamahiriya, Malta, Mauritania, Morocco, Portugal, Spain and Tunisia, together with observers IOM, ILO and ICMPD, aimed at increasing cooperation and information exchange on migration issues.

www.5plus5.tn/english/historiquedudialogue.htm

South American Conference on Migration

The South American Conference on Migration (SACM) member States are Argentina, Bolivia (Plurinational State of), Brazil, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Suriname, Uruguay and Venezuela (Bolivarian Republic of). Observer States from the region and elsewhere are also involved, in addition to several international organizations, including IOM, which provides technical cooperation and logistical support. Participating Governments hold annual meetings to share information and discuss various issues, including about the smuggling of migrants. A priority for SACM is respect for the human rights of migrants, irrespective of their status.

www.iom.int/jahia/Jahia/policy-research/sacm

4.15 Interregional and international coordination mechanisms and institutions

Dialogue on Mediterranean Transit Migration

The Dialogue on Mediterranean Transit Migration (MTM) involves numerous participants from Arab partner States and European partner States as well as various relevant observers. The dialogue follows guiding principles that are intergovernmental, informal and State-driven and is aimed at supporting efforts undertaken at the international, regional and subregional levels in Africa, the Near East and Europe.

The MTM Dialogue is built on two pillars:

- Enhancing operational cooperation to combat illegal migration (or, in other terms, shorter-term measures to address irregular flows)
- Addressing the root causes of irregular flows through development cooperation and better joint management of migration (the longer-term approach)

These pillars are used as frameworks for the implementation of specific projects, but cross-pillar projects are also put in place.

www.icmpd.org/906html?&no_cache=1&tx_icmpd_pi1%5Barticle%5D=922&tx_icmpd_pi1%5Bpage%5D=926

Global Migration Group

The Global Migration Group (GMG) is an inter-agency group bringing together heads of agencies to promote the wider application of all relevant international and regional instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better-coordinated approaches to the issue of international migration. GMG is particularly concerned with improving the overall effectiveness of its members and other stakeholders in capitalizing upon the opportunities and responding to the challenges presented by international migration.

GMG was established by the Secretary-General of the United Nations in early 2006 in response to a recommendation of the Global Commission on International Migration for the establishment of a high-level, inter-institutional group of agencies involved in migration-related activities. GMG was created by building on an existing inter-agency group with a more limited membership, the Geneva Migration Group, which had been established in April 2003.

GMG meets at regular intervals. The Chair is held on a rotating basis by the executive heads of its member organizations. All GMG members contributed actively to preparations for the 2006 General Assembly High-level Dialogue on International Migration and Development.

GMG consists of 14 members that are actively involved in international migration and related issues:

- International Labour Organization (ILO)
- International Organization for Migration (IOM)
- United Nations Conference on Trade and Development (UNCTAD)
- United Nations Development Programme (UNDP)
- United Nations Department of Economic and Social Affairs
- United Nations Educational, Scientific and Cultural Organization (UNESCO)
- United Nations Population Fund (UNFPA)
- Office of the United Nations High Commissioner for Human Rights (OHCHR)
- Office of the United Nations High Commissioner for Refugees (UNHCR)
- United Nations Children's Fund (UNICEF)
- United Nations Institute for Training and Research (UNITAR)
- United Nations Office on Drugs and Crime (UNODC)
- World Bank
- United Nations regional commissions

According to its terms of reference, GMG undertakes regular consultations for the following purposes:

- Establishing a comprehensive and coherent approach in the overall institutional response to international migration
- Providing direction and leadership in a system-wide context and promoting interest, dialogue and debate on migration-related issues, including trade and development aspects, with Governments, employers' and workers' organizations, and civil society
- Contributing to greater consistency in policy formulation and programme implementation
- Exchanging information and expertise to improve understanding, inter-agency cooperation and collaboration, to promote synergies and to avoid duplication
- Identifying critical issues, opportunities, challenges, weaknesses, gaps and best practices
- Pooling efforts in and exchanging the results of research, data collection and analysis
- Developing common positions, responses and actions in addressing specific situations or themes
- Agreeing on common activities to develop and exchange thematic expertise among staff, especially in the field of capacity-building and inter-agency transfers
- Reinforcing the human rights, labour rights, human security and criminal justice dimensions of migration governance and management, with a focus on the protection and well-being of migrants, including victims of trafficking

- Contributing to major initiatives of GMG members and the international community, such as the 2006 General Assembly High-level Dialogue on International Migration and Development and the follow-up to the report of the Global Commission on International Migration
- Enhancing the efforts of individual States, regional bodies and regional and global consultative processes in the field of international migration
- Finding appropriate mechanisms for GMG to interact with States

In addition to regular exchanges of information on developments in the migration field and in its work, GMG undertakes research and data collection, including surveys; conducts capacity-building activities; develops compendiums of its work, experience, and effective policies and practices in different areas; and works on identifying gaps.

Its areas of work include migration and development; migration and gender; migration and human rights; and the network of interactions between international migrants, governmental entities and international organizations.

It has developed a joint initiative on an international partnership on migration and development and has also supported the efforts of States hosting and participating in the Global Forum on Migration and Development.

www.globalmigrationgroup.org

Global Forum on Migration and Development

In September 2006, the General Assembly of the United Nations held the High-level Dialogue on International Migration and Development. Over 140 Member States discussed the global implications of international migration and the mutually beneficial interaction between migration and development. The Dialogue highlighted the close relationship between development policies and migration policies, and reaffirmed how good migration governance can contribute to development and how development policies can have an impact on migration. This complex relationship is of growing importance as migration increases every year.

As a result of these discussions, a large number of United Nations Member States expressed their interest in continuing the dialogue on migration and development by means of an informal, voluntary and State-led global forum.

On 9, 10 and 11 July 2007 the first meeting of the Global Forum on Migration and Development took place in Brussels. The governmental discussions on 10 and 11 July were preceded by a meeting of civil society representatives on 9 July. This marked the start of a new global process designed to enhance the positive impact of migration on development (and vice versa) by adopting a more consistent policy approach, identifying new instruments and best practices, exchanging know-how and experience about innovative tactics and methods and, finally, establishing cooperative links between the various actors involved.

The second meeting of the Global Forum on Migration and Development took place from 27 to 30 October 2008 in Manila. The central theme of the meeting was “Protecting and empowering migrants for development”.

The third meeting of the Global Forum on Migration and Development took place on 4 and 5 November 2009 under the overarching theme "Integrating migration policies into development strategies for the benefit of all".

www.gfmd-fmmd.org and www.gfmdathens2009.org

Recommended resource

United Nations, Commission on Human Security. *Human Security Now*. (Sales No. 03.III.U.2)

On 1 May 2003, the Co-Chairs of the Commission on Human Security, Sadako Ogata and Amartya Sen, presented the Commission's report to the Secretary-General of the United Nations.

The report proposes a new security framework that focuses directly and specifically on people. Human security is about shielding people from critical and pervasive threats and empowering them to take charge of their lives. It demands the creation of genuine opportunities for people to live in safety and dignity and to earn their livelihood.

At a time when the consensus on the meaning of security is eroding, there is a growing fear that existing institutions and policies are not able to cope with weakening multilateralism and global responsibilities. Nevertheless, the opportunities for working towards removing the insecurities facing people are greater than ever.

The Commission concentrates on a number of distinct but interrelated issues concerning conflict and poverty: protecting people in conflict and post-conflict situations and people who are forced to move, overcoming economic insecurity, guaranteeing essential health care and ensuring universal education. In its report, the Commission formulates recommendations and follow-up activities.

The idea of an independent Commission of Human Security was launched at the United Nations Millennium Summit. The Commission was launched in 2001 as an initiative of the Government of Japan.

The Commission's report, *Human Security Now*, proposes the development of an international migration framework that, among other issues, would include:

- Taking steps towards the orderly and safe movement of people, including increasing migratory opportunities and burden-sharing among countries
- Developing international and regional norms for the movement of people between countries and for the rights and obligations of migrants
- Formulating strategies to combat trafficking and smuggling and implementing the relevant international and regional conventions, while protecting the rights of victims
- Protecting against racism and intolerance and other human rights violations
- Developing an institutional framework

www.humansecurity-chs.org/finalreport/index.html

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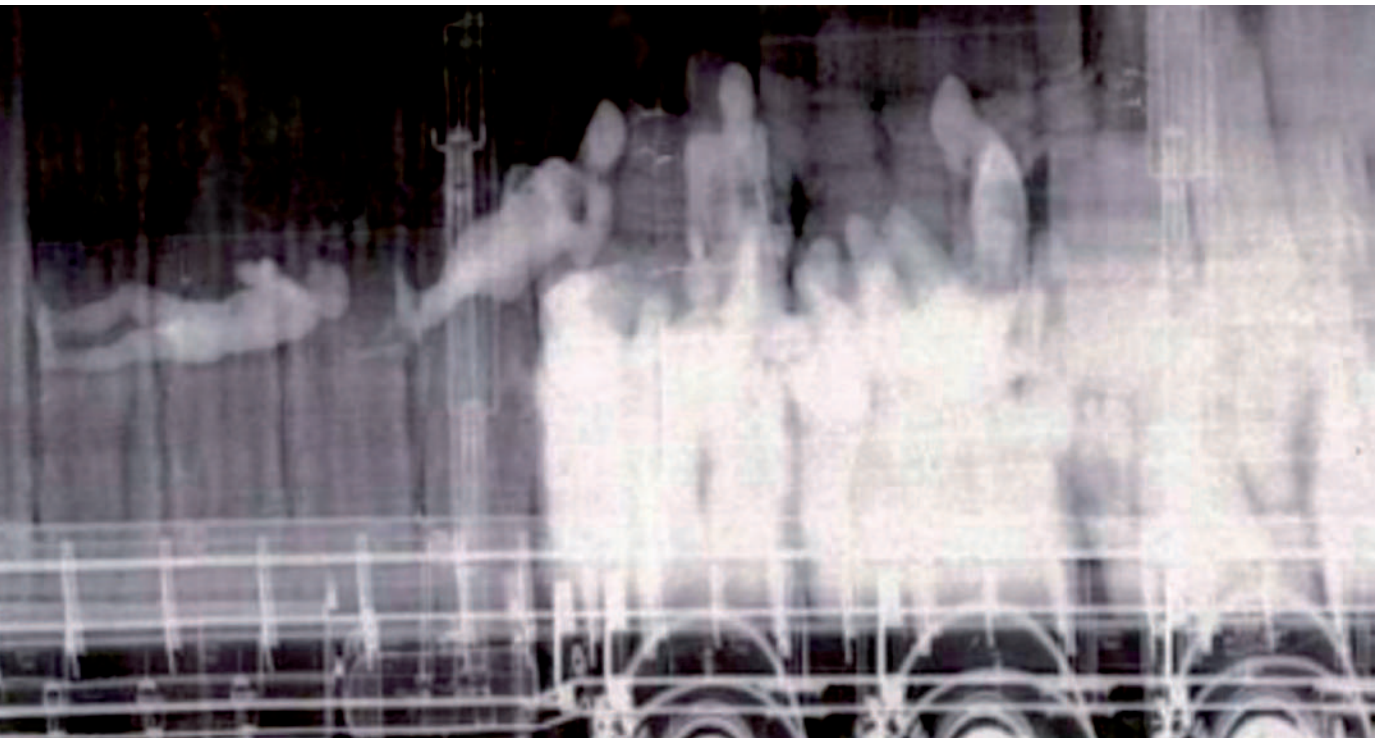

Toolkit to Combat Smuggling of Migrants

Tool 5

Legislative framework

5

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Toolkit to Combat Smuggling of Migrants

Tool 5

Legislative framework

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Contents

Overview 1

5.1 Definition of smuggling of migrants 3

5.2 Criminalization of the smuggling of migrants (art. 6, para. 1 of the Smuggling of Migrants Protocol) 5

5.3 Non-criminalization (art. 5 of the Smuggling of Migrants Protocol) 11

5.4 Other offences related to smuggling of migrants 14

5.5 Distinguishing between trafficking in persons and smuggling of migrants 16

5.6 The element of transnationality 19

5.7 The element of "organized criminal group" 21

5.8 Criminalization of aggravating circumstances (art. 6, para. 3) 24

5.9 Liability of legal persons 28

5.10 Criminalization of the laundering of proceeds of smuggling of migrants 30

5.11 Human rights and anti-smuggling legislation 32

5.12 Promising practices: legislation criminalizing smuggling of migrants 34

Overview

Investigations carried out in different jurisdictions are subject to different legislative frameworks. Ensuring that appropriate authority is sought and legislative procedures are followed can pose an investigative challenge to law enforcers who are seeking to mount investigations efficiently or apply investigative tactics creatively.

In some jurisdictions, specific legislation against the smuggling of migrants exists, while in others the smuggling of migrants may be criminalized under the criminal code. In still others, the smuggling of migrants may not be criminalized in any legal instrument. In the last-mentioned situation, prosecutors may have to rely on alternative offences to secure the conviction of smugglers of migrants.

Tool 5 sets out the legislative framework for criminalizing the smuggling of migrants, for States wanting to give practical domestic effect to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.1 Tool 5 is divided into sections as follows:

5.1 provides a snapshot of the definition of the smuggling of migrants as contained in the Smuggling of Migrants Protocol;

5.2 sets out the various acts that States need to criminalize in their domestic legislation in order to implement the Smuggling of Migrants Protocol, in accordance with article 6, paragraph 1 of the Protocol, and recommends some valuable resources that can support the process of criminalizing the smuggling of migrants in domestic legislation;

5.3 highlights what conduct is not intended to be criminalized under the Smuggling of Migrants Protocol, as a reminder to States of the need to ensure against legislation against such a conduct;

5.4 details some of the other offences that may be committed in the course of the smuggling of migrants and that may be brought as charges in addition to smuggling offences or in their stead where there is no specific legislation against the smuggling of migrants;

5.5 serves as a reminder of the need to distinguish between the offences of trafficking in persons and smuggling of migrants in domestic legislation, and reiterates the different elements that comprise the two crimes;

5.6 discusses the element of “transnationality”;

[1] United Nations, *Treaty Series*, vol. 2241, No. 39574.

5.7 discusses the element of "organized criminal group". This section and section 5.6 above explain why these two elements are not essential requirements for convictions for the smuggling of migrants under domestic law;

5.8 discusses the requirement for States also to criminalize aggravating circumstances;

5.9 explains that liability attaches to legal persons;

5.10 underlines the effectiveness of criminalizing the laundering of proceeds from the smuggling of migrants in disrupting smuggling;

5.11 stresses the central place that human rights considerations occupy in legislation against the smuggling of migrants by virtue of the article 19 saving clause;

5.12 offers some practical guidance to legislators by citing a selection of domestic legislation against the smuggling of migrants from around the world.

5.1 Definition of smuggling of migrants

Article 3 of the Smuggling of Migrants Protocol reads as follows:

"Use of terms

For the purposes of this Protocol:

(a) 'Smuggling of migrants' shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

(b) 'Illegal entry' shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) 'Fraudulent travel or identity document' shall mean any travel or identity document:

(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) That is being used by a person other than the rightful holder;

(d) 'Vessel' shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service."

The elements of smuggling of migrants

Article 3 of the Smuggling of Migrants Protocol defines the offence of smuggling of migrants as procuring the illegal entry of a person into a State of which that person is not a national or a permanent resident for the purpose of financial or material gain.

For more information, see Tool 1, section 8 on what constitutes the smuggling of migrants and related conduct and Tool 1, section 9 on what does not constitute the smuggling of migrants.

Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

The United Nations Convention against Transnational Organized Crime and the text of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime are available from:

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations Office on Drugs and Crime. *Issue Paper: A Short Introduction to Migrant Smuggling*.

This succinct issue paper offers an overview of what smuggling of migrants and related conduct consist in and gives practical examples of smuggling of migrants.

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2).

The main purpose of the Legislative Guides is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The Guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The Guides have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

5.2 Criminalization of smuggling of migrants (article 6, paragraph 1 of the Smuggling of Migrants Protocol)

Purpose

Article 2 of the Smuggling of Migrants Protocol establishes the basic purposes of the Protocol:

- Preventing and combating the smuggling of migrants
- Protection of the rights of smuggled migrants
- Promotion of cooperation between States parties

Criminalization of smuggling of migrants

Each State party is required to criminalize, when committed intentionally and in order to obtain a financial or other material benefit:

- Conduct constituting the smuggling of migrants (the procurement for material gain of the illegal entry of a person into a State party of which the person is not a national or permanent resident) (art. 3, subpara. *(a)* and art. 6, para. 1 *(a)*)
- Producing, procuring, providing or possessing fraudulent travel or identity documents when committed for the purpose of enabling smuggling of migrants (art. 6, para. 1 *(b)*)
- Enabling a person to remain in a country where the person is not a national or a permanent resident without complying with requirements for legally remaining by illegal means (art. 6, para. 1 *(c)*)
- Organizing or directing any of the above offences (art. 6, para. 2 *(c)*)
- Attempting to commit any of the above offences, subject to the basic concepts of the State party's legal system (art. 6, para. 2 (*a)*)
- Participating as an accomplice in any of the above offences (art. 6, para. 2 *(b)*)

Each State party is also required:

- To establish as aggravating circumstances to the above offences conduct that is likely To endanger or does endanger the migrants concerned or that subjects them to inhuman or degrading treatment (art. 6, para. 3)
- To apply numerous provisions of the Convention to this conduct (art. 1, paras. 2 and 3)

It is important to underline that only the conduct of those who profit financially or materially from the smuggling of migrants is to be criminalized. The "Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions: Addendum—Interpretative notes for the official

records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto" (A/55/383/Add.1) highlights that the activities of family members or non-governmental or religious groups that support migrants for humanitarian reasons should not be criminalized (see art. 5 and art. 6, para. 4 of the Protocol).

Article 5 clearly states that the illegal migrants themselves must not be held responsible for having been smuggled:

> "Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol."

It should be noted that the above requirements set the minimum standard. Domestic measures may be broader in scope or more stringent than those required by the Protocol, providing that all the obligations specified in the Protocol have been fulfilled.

The steps required to bring national legislation into compliance with these international instruments may be quite complex, depending on the current state of national law. The United Nations Office on Drugs and Crime (UNODC) has prepared Legislative Guides to inform and facilitate that process. Technical assistance may also be requested from UNODC.

Guidance for legislators from the United Nations Office on Drugs and Crime Model Law against Smuggling of Migrants

Chapter 2 of the UNODC Model Law against Smuggling of Migrants offers guidance on the criminalization of migrant smuggling:

Under article 6 of the Smuggling of Migrants Protocol, States parties are required to criminalize certain conduct. The starting point for understanding this obligation is article 3 of the Protocol, which defines "smuggling of migrants" as:

> "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident."

It is important to understand that the reference in this definition to "a financial or other material benefit" was included in order to emphasize that the intention was to include the activities of organized criminal groups acting for profit, but to exclude the activities of those who provided support to migrants for humanitarian reasons or on the basis of close family ties. As noted in the interpretative notes on the negotiation of the Protocol, it was not the intention of the Protocol to criminalize the activities of the family members or support groups such as religious or non-governmental organizations (A/55/383/Add.1, paras. 88-90).

In summary, pursuant to article 6 of the Protocol, States parties are required to criminalize the following conduct:

- Smuggling of migrants (art. 6, para. 1 *(a)*)
- Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by illegal means (art. 6, para. 1 *(c)*)

- Producing, procuring, providing or possessing fraudulent travel or identity documents when committed for the purpose of enabling smuggling of migrants (art. 6, para. 1 *(b)*)
- Organizing or directing any of the above offences (art. 6, para. 2 *(c)*)
- Attempting to commit any of the above offences, subject to the basic concepts of the State party's legal system (art. 6, para. 2 *(a)*)
- Participating as an accomplice in any of the above offences, subject to the basic concepts of the State party's legal system (art. 6, para. 2 *(b)*)

It is important for drafters to recall that pursuant to article 5, migrants shall not become liable to criminal prosecution under the Smuggling of Migrants Protocol for the fact of having been the object of conduct set forth in article 6 of the Protocol. It is therefore to be understood that all offence provisions developed to give effect to the Protocol should aim to target the smugglers of migrants, and not the people being smuggled.

Finally, it should also be noted that refugees often have to rely on smugglers to flee persecution, serious human rights violations or conflict. They should not be criminalized for making use of smugglers or for their illegal entry (art. 31 of the Convention relating to the Status of Refugees[2] and art. 19 of the Smuggling of Migrants Protocol). (UNODC *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (forthcoming).)

Issues to consider when drafting legislation

There is no one ideal drafting option to give effect to these obligations; they could be met through national laws drafted in a variety of ways, provided the key elements of the offences are established.

For example, it is possible to draft omnibus offence provisions covering not only the smuggling of migrants but also enabling illegal residence and document-related offences. In each case, it would be up to the prosecutor to specify which elements of the offence were being prosecuted. An omnibus offence has advantages, including ensuring that the entire smuggling process is covered without leaving any gaps between the offences.

Alternatively, it would be perfectly acceptable to draft provisions for three separate offences: smuggling of migrants, enabling illegal residence and document-related offences. However, care should be taken to ensure that there are no gaps between the various forms of conduct. Also, attention may need to be paid to whether, for example, an offence related to fraudulent documents would be covered both by the provisions for the offence of smuggling of migrants and the provisions for document-related offences, or not.

States should consider whether legislative provisions should differentiate between attempted and completed offences. While the Protocol does refer to "attempting to commit an offence", there is no requirement for national law to make such a distinction. In fact, on certain practical grounds, it may be preferable for a single provision to cover preparations for smuggling of migrants, attempts at smuggling migrants and the successful commission of the offence. For example, when a strong coastguard presence deters illegal entry into a country by sea, the modus operandi of the smugglers is to take the migrants within sight of land and then dump them into the sea in the assumption that they will either swim to shore or be

[2] United Nations, *Treaty Series*, vol. 189, No. 2545.

rescued by the coastguard. In these situations, the coastguard will seek to intervene proactively to prevent loss of human life. Should these situations be regarded as attempted smuggling? Arguably, no offence has been committed since no illegal entry has occurred. Therefore, arguably, it might be preferable to cover the entire smuggling process (from preparation to successful completion) under the offence provision.

However, as regulatory approaches to the concepts of preparation for and attempts at committing offences differ from State to State, this issue will need to be resolved in accordance with local drafting traditions.

In some jurisdictions, the 2008 preparation for committing an offence can be criminalized. For example in Thailand, the Anti-Trafficking in Persons Act B.E. 2551 states that whoever prepares to commit an offence under section 6 (trafficking in persons) shall be liable to one third of the punishment stipulated for such an offence. This may be a useful option to consider where consistent with national legal traditions.

Finally, while the Protocol refers to "the illegal entry of a person into a State Party", it may be more expedient to refer to the illegal entry into any State to avoid restricting the scope of the offence to other parties to the Protocol. When deciding on this issue, it is important to recall that a number of States already have offence provisions that are drafted in this way, such as Australia and the United Kingdom of Great Britain and Northern Ireland. Without a comparable offence in source and transit countries in particular, issues may arise with regard to a lack of dual criminality to support mutual legal assistance or extradition.

Relationship to offences under the Organized Crime Convention

In addition to the basic offences required by the Protocol, it is essential to ensure that national laws adequately criminalize participation in an organized criminal group (art. 5 of the Organized Crime Convention); laundering of the proceeds of crime (art. 6); corruption (art. 8); and obstruction of justice (art. 23). In addition, measures to establish the liability of legal persons must be adopted (art. 10). UNODC is currently developing best practices and model provisions for the implementation of these articles, in the context of the development of a model law to give effect to the Convention.

To see the model criminalization articles provided in the UNODC Model Law against Smuggling of Migrants, see section 5.12 below.

Promising practices

For samples of national legislation criminalizing migrant smuggling, see section 5.12.

Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations. *International framework for action to implement the Smuggling of Migrants Protocol*.

The Framework for Action is a technical assistance tool that aims to assist United Nations Member States in the effective implementation of the Smuggling of Migrants Protocol supplementing the Organized Crime Convention. The Framework for Action consists of a narrative section describing key challenges in the implementation of the Protocol, and a set of tables detailing measures that can be taken to support implementation.

The Framework is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Issue Paper: A Short Introduction to Migrant Smuggling*.

This succinct issue paper offers an overview of what smuggling of migrants and related conduct consist in and gives practical examples of smuggling of migrants.

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2).

The *Legislative Guides* are available from UNODC to assist States in ratifying or implementing the Organized Crime Convention and the Protocols thereto, including the Smuggling of Migrants Protocol.

While the *Legislative Guides* are chiefly directed at policymakers and legislators in States preparing for the ratification and implementation of the Convention and its Protocols, the Guides also provide a helpful basis for bilateral technical assistance projects and other initiatives to promote the broad ratification and implementation of these important legal instruments.

The *Legislative Guides* accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options. However, as the *Guides* are primarily for the use of drafters of legislation, not all provisions of the Convention and its Protocols are addressed. The focus is on those provisions that require legislative change and/or those requiring action prior to or at the time when the Organized Crime Convention or one of its Protocols becomes applicable to the State party concerned.

The *Legislative Guides* lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address; they also provide a range of options and examples that national drafters may wish to consider as they develop legislation to implement the Convention and its Protocols. The *Guides* do not cover the provisions of the Convention and Protocols that do not contain legislative implementation obligations.

The *Legislative Guides* are available from:

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations Office on Drugs and Crime. *Model Law against Smuggling of Migrants*.

The UNODC Model Law against Smuggling of Migrants is being developed to assist States in implementing the provisions contained in the Smuggling of Migrants Protocol supplementing the Organized Crime Convention. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law covers not only the criminalization of smuggling of migrants and related offences, but also the different aspects of assistance to victims as well as establishing cooperation between different State authorities and non-governmental organizations. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples.

The model law is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

Bali Process Model Law to Criminalise People Smuggling.

The Bali Process is a voluntary non-binding grouping in the Asia-Pacific region. Its objectives are, inter alia, to improve regional and international cooperation to combat the smuggling of migrants and the enactment of legislation to criminalize the smuggling of migrants.

To these ends, the Bali Process offers the Model Law to Criminalise People Smuggling, available on its website at:

www.baliprocess.net/files/Legislation/Model%20law%20-%20people%20smuggling%20-%20final.pdf

For more information on Bali Process Model Laws visit:

www.baliprocess.net/index.asp?PageID=2145831427

In addition to criminalization of smuggling of migrants and related offences, the Smuggling of Migrants Protocol also requires States to take measures with respect to:

- Providing assistance and protection to smuggled migrants. For more on this, see Tool 8, section 8.1.
- Repatriation. For more on this, see Tool 7, section 7.23.
- Non-refoulement. For more on this, see Tool 8, section 8.11.
- Prevention. For more on this, see Tool 9, section 9.1.
- Cooperation and assistance requirements. For more on this, see Tool 6, sections 6.1 and 6.11.

5.3 Non-criminalization (article 5 of the Smuggling of Migrants Protocol)

The Smuggling of Migrants Protocol does not intend to criminalize:

- The activities of family members or other groups who smuggle a person (or enable or facilitate their stay) without any profit motive
- Irregular migration
- The conduct of migrants who do not smuggle others

It is imperative to remember that the Smuggling of Migrants Protocol in no way criminalizes the migrants themselves for having been smuggled, by virtue of article 5 of the Protocol, which reads:

> "Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol."

In other words, a person cannot be charged with the crime of smuggling solely on the grounds of having been smuggled. This does not mean that such persons cannot be prosecuted for having smuggled others, or for the commission of any other offences.

The intention of the drafters of the Smuggling of Migrants Protocol was that the sanctions established in accordance with the Protocol should apply to the smuggling of migrants by organized criminal groups and not to migration itself, even in cases involving entry or residence that is illegal under the laws of the State concerned (see art. 5 and art. 6, para. 4 of the Protocol).

Illegal entry may be a crime in some countries, but it is not recognized as a form of organized crime and is hence beyond the scope of the Convention and its Protocols. The procurement of the illegal entry or illegal residence of migrants by an organized criminal group (which, according to the definition used, commits crimes in order to obtain financial or other material benefit), on the other hand, has been recognized as a serious form of transnational organized crime and is therefore the primary focus of the Protocol.

The fundamental policy set out by the Protocol is that it is the smuggling of migrants and not migration itself that is the focus of the criminalization and other requirements. The Protocol takes a neutral position in relation to whether those who migrate illegally should be charged with any offences and article 5 ensures that nothing in the Protocol can be interpreted as requiring the criminalization of migrants or of conduct likely to be engaged in by migrants as opposed to members or associates of organized criminal groups.

At the same time, article 6, paragraph 4 ensures that nothing in the Protocol limits the existing rights of each State party to take

> "measures against persons whose conduct constitutes an offence under its domestic law."

Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations Office on Drugs and Crime. *Model Law against Smuggling of Migrants.*

The UNODC Model Law against Smuggling of Migrants has been developed to assist States in implementing the provisions contained in the Smuggling of Migrants Protocol supplementing the Organized Crime Convention. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law covers not only the criminalization of the smuggling of migrants and related offences, but also the different aspects of assistance to victims and the establishment of cooperation between different State authorities and non-governmental organizations. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples.

Article 9 of this resource concerns the criminal liability of smuggled migrants. It provides an optional protocol that reads as follows:

> "Without prejudice to the applicability of other laws establishing criminal offences, migrants shall not become liable to criminal prosecution under this law for the fact of having been the object of conduct set forth in Chapter 2 of this law."

The model law is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world. Module 7 addresses legislative issues including non-criminalization.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The *Guides* lay out the basic requirements of the Convention

and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The *Guides* have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.06.V.5).

The publication of the T*ravaux Préparatoires* (official records) of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto is intended to provide a better, in-depth understanding of the Convention and its Protocols. The publication tracks the progress of negotiations in the open-ended intergovernmental Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, established by the General Assembly by its resolution 53/111 of 9 December 1998 with terms of reference supplemented by the Assembly in its resolution 53/114 of 9 December 1998, and requested to submit the final text of the Convention and the Protocols thereto to the General Assembly for adoption (resolution 54/126).

www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html

5.4 Other offences related to smuggling of migrants

It is highly likely that other offences will have been committed in the course of the smuggling of migrants. Depending on national laws and policies, the investigator may need to investigate all such offences. Alternatively, he or she may seek to prove other offences where not all of the components of the crime of smuggling of migrants can be corroborated.

Beyond this, there may be no national legislation criminalizing the smuggling of migrants as such. In this case, other offences could be investigated and prosecuted instead.

The list below outlines some—but by no means all—of the offences that may be committed in the course of the smuggling of migrants. The list does not presume to be exhaustive, nor to address all different legal systems and national laws. It is meant purely to draw attention to the fact that offences are committed in addition to smuggling of migrants that require attention and may be instrumental in securing the prosecution of a smuggler of migrants.

Transport-related offences

- Transportation without declaring goods in vehicle
- Misrepresentation of cargo or identity at border

Document-related offences and crimes of dishonesty

- Document fraud or forgery
- Dishonest handling (of stolen passports for example)

Immigration-related offences

- Clandestine entry
- False statements to border officer
- Harbouring an immigration offender
- Failure to surrender to immigration bail

Crimes of dishonesty

- Money-laundering
- Theft (such as theft of passports)
- Forgery
- Deception
- Fraud

- Corruption
- Abuse of office

Other criminal offences

- Murder
- Involuntary manslaughter
- Assault
- False imprisonment or unlawful confinement
- Kidnap or abduction
- Drug offences (possession, supply or trafficking)
- Sham marriage
- Perjury (in marriage cases)
- Bigamy (in marriage cases)
- Trafficking in persons
- Participating in an organized criminal group
- Bodily harm or bodily injury
- Sexual offences
- Torture, inhuman or degrading treatment
- Weapons offences
- Endangering lives contrary to dignity
- Obstruction of justice
- Interference with witnesses

Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world. Module 7 addresses other offences which may be used in prosecuting smugglers.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

5.5 Distinguishing between trafficking in persons and smuggling of migrants

In legislating to criminalize the smuggling of migrants, it is important to ensure that it is differentiated from trafficking in persons which should also be criminalized.

The crimes of trafficking in persons and that of smuggling of migrants are defined separately in the Protocols supplementing the Organized Crime Convention, and are dealt with in different instruments. This is because of very important differences between the crimes.

There are three key reasons for drafting distinct legislation in relation to these two serious crimes:

- The constituent elements of the offences are different.
- The response required by the authorities varies, depending on the offence.
- There are serious implications in connection with whether a person is recognized as a smuggled migrant or a victim of trafficking.

In practice, it may be difficult to distinguish between a situation of trafficking and a situation of smuggling for many reasons:

- Smuggled migrants may become victims of trafficking.
- Traffickers may also act as smugglers and use the same routes for both trafficking and smuggling.
- Conditions for smuggled persons may be so bad that it is difficult to believe that they gave their consent.

However, there are key differences between trafficking in persons and smuggling of migrants that should be reflected in legislation as shown in table 1 below.

Table 1. Key differences between trafficking in persons and smuggling of migrants

Element	*Smuggling of migrants*	*Trafficking in persons*
Consent	Smuggled migrants generally consent to being smuggled (though their consent may be retracted).	Trafficking victims have not consented or their consent is rendered meaningless through use of improper means (the notion of consent is irrelevant with regard to children).
Transnationality	Smuggling involves illegal border crossing and entry into another country.	Trafficking does not necessarily involve crossing a border—the entire trafficking process can occur within one State. When a border is crossed during the trafficking process, the legality or illegality of the border crossing is irrelevant.

Exploitation	The relationship between the smuggler and the migrant usually involves a commercial transaction and usually ends after the border crossing.	The relationship between traffickers and their victims involves ongoing exploitation of the victims to generate profit for the traffickers.
Source of profit	Smugglers generate profit from fees to move people.	Traffickers acquire additional profits through the exploitation of victims.

For more information on trafficking in persons see Tool 1, section 11. To learn how to distinguish between trafficking in persons and smuggling of migrants, see Tool 1, section 12.

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting Migrant Smuggling*.

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world. Module 1 examines the differences between smuggling of migrants and trafficking in persons.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Issue Paper: A Short Introduction to Migrant Smuggling.*

This succinct issue paper offers an overview of what smuggling of migrants and related conduct consist of and gives practical examples of smuggling of migrants.

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations. *Toolkit to Combat Trafficking in Persons* (Sales No. E.08.V.14).

In pursuit of the goals of preventing and combating trafficking in persons, protecting and assisting its victims and promoting international cooperation to these ends, the UNODC *Toolkit to Combat Trafficking in Persons* seeks to facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society who are working at different

levels towards these same objectives. Specifically, the *Toolkit* provides guidance, showcases promising practice and recommends resources in thematic areas from around the world. Tool 1.2 of this resource examines the difference between trafficking in persons and smuggling of migrants.

PDF version:

www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuside

Online version:

www.unodc.org/unodc/en/human-trafficking/electronic-toolkit-to-combat-trafficking-in-persons---index.html

5.6 The element of transnationality

It must be borne in mind that:

- While States parties should have to provide for some degree of transnationality and organized crime with respect to most aspects of the Protocol, their prosecutors should not have to prove either element in order to obtain a conviction for smuggling of migrants or any other offence established in accordance with the Convention or its Protocols.
- Smuggling of migrants should be criminalized under domestic legislation even where transnationality and the involvement of organized criminal groups are not present or cannot be proved.

Article 4 (Scope of application) of the Smuggling of Migrants Protocol mentions application of the Protocol to offences that "are transnational in nature".

In considering transnationality, the nature of smuggling of migrants should also be taken into account. The general principle governing transnationality is that any element of foreign involvement would trigger application of the Convention and the relevant Protocols, even in cases where the offence or offences at hand are purely domestic. In the case of smuggling of migrants, however, without some element of cross-border movement, there would neither be migrants nor smuggling. It should be noted, however, that the same considerations do not apply to the other offences established in accordance with the provisions of the Protocol: falsification or misuse of travel or identity documents and the enabling of illegal residence would trigger application of the instruments whenever the basic requirements of articles 2 and 3 of the Convention and article 4 of the Protocol were met.

Non-inclusion of transnationality in domestic offences

- The element of transnationality is one of the criteria for applying the Convention and the Protocols (art. 3 of the Convention). At the same time, article 34, paragraph 2, provides that offences shall be established in domestic law independently of transnationality. Of course, the definition of smuggling of migrants in this Protocol provides for a crime that involves transborder smuggling. Thus, in general, domestic legislation implementing the Protocol will appropriately include an element of transborder activity. However, the specific transnationality criteria of article 3 of the Convention need not be incorporated into such domestic legislation.

Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The *Guides* lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The *Guides* have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.06.V.5).

The publication of the *Travaux Préparatoires* (official records) of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto is intended to provide a better, in-depth understanding of the Convention and its Protocols. The publication tracks the progress of negotiations in the open-ended intergovernmental Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, established by the General Assembly by its resolution 53/111 of 9 December 1998 with terms of reference supplemented by the Assembly in its resolution 53/114 of 9 December 1998, and requested to submit the final text of the Convention and the Protocols thereto to the General Assembly for adoption (resolution 54/126).

www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html

5.7 The element of "organized criminal group"

- As with transnationality (see section 5.6 above), the involvement of an organized criminal group need not be required for a domestic prosecution. Thus, the offences established in accordance with the Protocol should apply regardless of whether or not the perpetrators were associated with an organized criminal group and regardless of whether or not involvement with an organized crime group can be proved.
- It must also be noted that article 5 of the Organized Crime Convention requires States to criminalize participation in an organized criminal group.

Article 4 (Scope of application) of the Smuggling of Migrants Protocol mentions application of the Protocol to offences that "involve an organized criminal group".

This reference, coupled with that in article 6 to "financial or other material benefit" is related to the question as to whether or not the Smuggling of Migrants Protocol requires States to criminalize or take other action against groups that smuggle migrants for charitable or altruistic reasons, as sometimes occurs with the smuggling of asylum seekers.

Only smuggling for financial or material benefit is criminalized under the Protocol. Article 4 refers to "an organized criminal group"; the definition of that term in article 2 *(a)* of the Convention refers to "financial or other material benefit", language which is specifically reproduced in article 6 of the Protocol, on criminalization.

Regarding the definition of "organized criminal group", it should be noted that the words "in order to obtain, directly or indirectly, a financial or other material benefit" should be understood broadly, to include, for example, crimes in which the predominant motive may be sexual gratification. This would address situations in which a smuggler of migrants requests sexual favours rather than financial payment for the provision of smuggling services.

Non-inclusion of "organized criminal group" in domestic offences

It has been argued that "smuggling organizations are often little more than loose networks linking largely independent clusters of practical competencies. The coordination among such clusters is often the result of a nexus of contracts and business promises rather than the result of a structured chain of command."[3]

This is not in contradiction with the United Nations Transnational Organized Crime Convention, which criminalizes participation in an "organized criminal group" in article 5.

[3] Ferruccio, Pastore, Paola Monzini and Giuseppe Sciortino, "Schengen's soft underbelly? Irregular migration and human smuggling across land and sea borders to Italy", *International Migration* vol. 44, No. 4, p.114 ff. (September 2006).

Conversely, the involvement of an organized criminal group need not be required as an element for a domestic prosecution. Thus, the offences established in accordance with the Protocol apply regardless of whether or not the perpetrators were associated with an organized criminal group, and regardless of whether or not involvement with an organized criminal group can be proved.

Article 34, paragraph 2 of the Organized Crime Convention states that offences established by the Convention

> "shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5[4] of this Convention would require the involvement of an organized criminal group."

Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2).

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www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (*Sales No. E.06.V.5).

The publication of the *Travaux Préparatoires* (official records) of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto is intended to provide a better, in-depth understanding of the Convention and its Protocols. The publication tracks the progress of negotiations in the open-ended

[4] Criminalization of participation in an organized criminal group.

intergovernmental Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, established by the General Assembly by its resolution 53/111 of 9 December 1998 with terms of reference supplemented by the Assembly in its resolution 53/114 of 9 December 1998, and requested to submit the final text of the Convention and the Protocols thereto to the General Assembly for adoption (resolution 54/126).

www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html

5.8 Criminalization of aggravating circumstances, (article 6, paragraph 3)

Article 6, paragraph 3 of the Smuggling of Migrants Protocol requires States parties to adopt legislative and other measures to establish as aggravating circumstances to the offences of smuggling of migrants:

- Circumstances that endanger or are likely to endanger the lives or safety of the migrants concerned
- Inhuman or degrading treatment, including for exploitation of migrants

Examples of aggravating circumstances may include (but are not limited to):

- Abuse of a child or abuse of a position of trust or authority
- Connections with other crimes such as drug smuggling: for instance, migrants may be compelled to carry drugs when they are smuggled
- Conditions in which migrants are smuggled if, for example, the boat, bus or car was particularly hot, cold, wet, dry or crowded, or if the current at sea was particularly strong

Without adding further offences, States parties are also required to incorporate provisions into some of the offences established in accordance with the Protocol ensuring that cases where certain circumstances have been present are taken more seriously. The obligation is fully mandatory for all offences except those participating as an accomplice and organizing or directing others to commit offences, which are subject to the basic concepts of the legal system of the implementing State party (see below).

Generally, legislatures are required to establish dangerous or degrading circumstances as aggravating circumstances to smuggling offences. Depending on the legal system, this could take the form either of parallel offences, such as aggravated smuggling, or of provisions that require the courts to consider longer or more severe sentences where the aggravating conditions are present and the accused have been convicted of one or more of the basic offences established in accordance with the Protocol. The fundamental obligation is to ensure that, where the aggravating circumstances are present, offenders at least risk harsher punishments.

In most systems, subjecting offenders to a harsher punishment where the specified circumstances have existed will require that those circumstances be established as a matter of fact to a criminal standard of proof. Depending on domestic law, drafters may wish to consider making specific provisions regarding what must be proved, to what standard and at what stage of the proceedings, as well as establishing any relevant inferences or legal or evidentiary presumptions.

The most common situation that this requirement is intended to cover is the use of modes of smuggling, such as shipping containers, that are inherently dangerous to the lives of the migrants,

but legislation should be broad enough to encompass other circumstances, such as cases where fraudulent documents create danger or lead to inhuman or degrading treatment.

"Inhuman or degrading treatment" may include treatment inflicted for the purposes of some form of exploitation. It should be noted that if there is no consent or if there is consent that has been vitiated or nullified as provided for in article 3, subparagraphs *(b)* or *(c)*, of the Trafficking in Persons Protocol, the presence of exploitation in what would otherwise be a smuggling case will generally make the offence of trafficking in persons applicable if the State party concerned has ratified and implemented that Protocol. The interpretative notes indicate that the reference to exploitation here is without prejudice to that Protocol (A/55/383/Add.1, para. 96).

Aggravating and mitigating factors are generally matters for prosecutors and the judiciary, with law enforcement authorities playing a key role. They are factors to be considered during trial and sentencing. Aggravating and mitigating factors as considerations for sentencing are dependent on relevant evidence gathered by the investigators within the crime investigation arena.

The presence of either aggravating or mitigating factors may have an impact on the priority consideration for commencing investigations. If an investigator is handling several cases, an aggravating factor may be what leads one investigation to be given a higher priority than another. Similarly, mitigating factors may lead to a decision not to invest resources in a particular investigation.

Some of the aggravating and mitigating factors that could influence investigations are given in table 2 below. It must be remembered that these factors and their relevance can only be determined on a case-by-case basis. They may only assist in determining if an investigation should be pursued or prioritized; the judiciary concerned will ultimately have to consider similar issues at the time of any sentencing.

Table 2. Aggravating and mitigating factors that could influence investigations

Aggravating factor	*Mitigating factor*
Methodology: high level of risk to those smuggled, for example people sent out unattended in a boat that is not seaworthy	Smugglers treat migrants well
Large number of migrants involved	One-off occasion (for example, young offender with no criminal record)
Poor travel conditions (lack of air, water or food, extremely hot or extremely cold temperatures, unsafe sea conditions)	Smugglers take steps to ensure safe travel conditions for migrants
High profit (for example, sole income is profit)	Low profit
Use of violence, threats or intimidation against migrants or their families. For example, hitting migrants to control them during travel	No use of violence

Table 2. Aggravating and mitigating factors that could influence investigations *(continued)*

Aggravating factor	*Mitigating factor*
Exploitation of migrants or potential for trafficking in persons	Arrangement between smuggler and migrant is upheld
Abuse of power or authority (for instance, baggage handler, airport staff, offence committed by public official)	
Minority age of migrants or use of minors in the commission of offences	
Commission of other offences (for instance, violence towards smuggled migrants, sexual assault during travel, migrants compelled to smuggle drugs or guns)	
Uncooperative with police	Cooperative with police

Where other offences are committed, investigators must remember to investigate those offences as well. The commission of an assault during a migrant smuggling venture is not simply an aggravating factor: it is an offence in its own right and should be investigated as if it had occurred separately.

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting Migrant Smuggling*.

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world. Module 1 examines the differences between smuggling of migrants and trafficking in persons.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Issue Paper: A Short Introduction to Migrant Smuggling.*

This succinct issue paper offers an overview of what smuggling of migrants and related conduct consist of and gives practical examples of smuggling of migrants.

www.unodc.org/unodc/en/human-trafficking/publications.html

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The *Guides* lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The *Guides* have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

5.9 Liability of legal persons

Liability for offences must be established both for natural or biological persons and for legal persons, such as corporations, in accordance with article 10 of the Organized Crime Convention.

Requirements under the Organized Crime Convention

Article 10, paragraph 1 of the Organized Crime Convention requires that each State party adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in serious crimes involving an organized criminal group and for the offences established in accordance with the Convention itself.

Therefore, the obligation to provide for the liability of legal entities is mandatory, to the extent that this is consistent with each State's legal principles, in three types of cases:

- For participation in serious crimes involving an organized criminal group
- For other offences established by States parties as required by the Convention itself
- For offences established by any protocol to which the State is, or intends to become, a party, including the Smuggling of Migrants Protocol

Article 10, paragraph 2 of the Convention provides that "subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative". This is consistent with other international initiatives, which acknowledge and accommodate the diversity of approaches adopted by different legal systems with respect to the liability of legal entities. Thus, there is no obligation to establish criminal liability if that is inconsistent with a State's legal principles. In such cases, a form of civil or administrative liability will be sufficient to meet the requirement.

Article 10, paragraph 3 of the Convention requires that the liability of legal entities be established "without prejudice to the criminal liability of the natural persons who have committed the offences".

The liability of the natural persons who perpetrated the acts, therefore, is in addition to any corporate liability and must not be affected at all by the latter. When an individual commits crimes on behalf of a legal entity, it must be possible to prosecute and sanction both the individual and the legal entity.

Article 10, paragraph 4 of the Convention requires that States "ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions".

This is a specific provision that complements the more general requirement of article 11, paragraph 1 that sanctions must take into account the gravity of the offence.

The investigation and prosecution of transnational organized crimes can be comparatively lengthy. Consequently, States with legal systems providing for statutes of limitation must ensure that the limitation periods for the offences covered by the Convention and the Protocols are comparatively long, taking into account and in accordance with their domestic law and fundamental principles (art. 11, para. 5). While the provisions of article 11 apply to both natural and legal persons, those of article 10 apply only to legal persons.

The most frequently used sanction is a fine, which is sometimes characterized as criminal, sometimes as non-criminal and sometimes as hybrid. Other sanctions include forfeiture, confiscation, restitution or even closing down of legal entities. In addition, States may wish to consider the non-monetary sanctions available in some jurisdictions, such as withdrawal of certain privileges, suspension of certain rights, prohibition of certain activities, publication of the judgement, the appointment of a trustee and direct regulation of corporate structures.

Recommended resource

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2).

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www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

5.10 Criminalization of the laundering of proceeds of smuggling of migrants

In establishing the offences required by the Protocols, it is important to bear in mind that each Protocol must be read in conjunction with the parent Convention.

The provisions of the Convention apply to the Protocol, mutatis mutandis, and among States parties to the Protocol the offences established in accordance with the Protocol are to be considered offences established in accordance with the Convention.

Application of these provisions creates an obligation upon States parties, inter alia, to take the measures below with respect to the offences established in accordance with the Protocol.

States parties must criminalize the laundering of the proceeds of a comprehensive range of offences in accordance with article 6 of the Convention.

A State's strategy to combat the smuggling of migrants should include rigorous confiscation regimes that provide for the identification, freezing, seizure and confiscation of illicitly acquired funds and property. However, organized criminal groups, including those involved in the smuggling of migrants, may try to avoid confiscation of their illegally gained wealth by disguising the criminal origins of their assets. Criminalizing such laundering of proceeds of the smuggling of migrants is an important part of the strategy to combat the crime.

Article 6 of the Organized Crime Convention requires that each State establish the following four offences related to money-laundering:

- Conversion or transfer of property for the purpose of concealing its illicit origin
- Concealment or disguise of the proceeds of crime
- Acquisition, possession or use of the proceeds of crime
- Indirect contribution to the commission of the offences outlined above, including participation in and conspiring or attempting to commit the offences in question.

Predicate offences

A predicate offence is an offence whose proceeds may become the subject of any of the money-laundering offences established under the Convention. Many States already have laws on money-laundering, but there are many variations in the definition of predicate offences. Some States limit the predicate offences to drug trafficking, or to drug trafficking and a few other crimes. Other States have an exhaustive list of predicate offences set forth in their legislation. Still other States define predicate offences generically as including all crimes, or all serious crimes, or all crimes subject to a defined penalty threshold.

Article 6, paragraph 2 *(a)*, of the Organized Crime Convention requires that the provisions concerning money-laundering should be applicable to the "widest range of predicate offences", including the offences established by the Convention itself and the Protocols to which the State has become a party, as well as all serious crime (art. 6, para. 2 *(b)*) as defined by the Convention.

Other measures to combat money-laundering

Article 7 of the Organized Crime Convention requires States parties to take additional measures. They shall:

- Establish a regulatory and supervisory regime for banks and non-bank financial institutions, emphasizing requirements for customer identification, record-keeping and the reporting of suspicious transactions
- Ensure that administrative, regulatory, law enforcement and other authorities have the ability to cooperate and exchange information
- Promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities
- Use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering
- Consider implementing measures to detect and monitor movements of cash and appropriate negotiable instruments across their borders, such as a requirement that individuals and businesses report substantial cross-border transfers

Recommended resources

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The *Guides* lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The *Guides* have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

An overview of the United Nations Conventions and other international standards concerning anti-money-laundering legislation is available from:

www.unodc.org/unodc/en/money-laundering/Instruments-Standards.html

United Nations model legislation on laundering, confiscation and international cooperation in relation to the proceeds of crime is available from:

www.unodc.org/unodc/en/money-laundering/Model-Legislation.html

5.11 Human rights and anti-smuggling legislation

Article 19 of the Smuggling of Migrants Protocol adds the saving clause, which clarifies that the Protocol does nothing to undermine the human rights of migrants.

Smuggling of Migrants Protocol

Article 19. Saving clause

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

*United Nations, *Treaty Series*, vol. 606, No. 8791.

Furthermore, victims and witnesses are to be protected from potential retaliation or intimidation under the provisions of articles 24 and 25 of the Convention.

For more on human rights, see Tool 8, section 9.

Recommended resources

Platform for International Cooperation on Undocumented Migrants. *Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework* (2007).

The purpose of this overview is to present a comprehensive picture of the "international migration regime" and to offer a useful tool that can be used by a wide range of actors to strengthen their knowledge of undocumented migrants' human rights. It is divided into two parts. Part I lists instruments within the international and European human rights frameworks and clarifies why and how these instruments uphold the human rights of undocumented migrants. Part II enumerates in more detail all of the human

rights that apply to undocumented migrants within the international and European conventions and lists the relevant articles.

This publication is available from: www.picum.org/?pid=210

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting Migrant Smuggling.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world. Module 1 examines the differences between smuggling of migrants and trafficking in persons.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Model Law against Smuggling of Migrants.*

The UNODC Model Law against Smuggling of Migrants is being developed to assist States in implementing the provisions contained in the Smuggling of Migrants Protocol supplementing the Organized Crime Convention. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law covers not only the criminalization of smuggling of migrants and related offences, but also the different aspects of assistance to victims as well as establishing cooperation between different State authorities and non-governmental organizations. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples.

The model law is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

5.12 Promising practices: legislation criminalizing smuggling of migrants

United Nations Office on Drugs and Crime Model Law against Smuggling of Migrants

Below is an excerpt from the draft UNODC Model Law against Smuggling of Migrants.

UNODC Model Law against Smuggling of Migrants

Article 5A: Smuggling of migrants

(1) Any person who intentionally, in order to obtain directly or indirectly a financial or material benefit, procures the illegal entry of a person into a Protocol State of which the person is not a national or a permanent resident, commits an offence punishable by [insert penalty].

(2) For the purposes of (1), "illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State.

Article 5B: Offences in relation to travel or identity documents

(1) Any person who intentionally, in order to obtain directly or indirectly a financial or other material benefit, produces, procures, provides or possesses a fraudulent travel or identity document, for the purpose of enabling the smuggling of migrants, commits an offence.

(2) For the purposes of (1), "fraudulent travel or identity document" shall mean any travel or identity document:

(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner;

(iii) That is being used by a person other than the rightful holder.

Article 5C: Enabling illegal residence

Any person who intentionally, in order to obtain directly or indirectly a financial or material benefit, uses illegal means to enable a person who is not a national or a permanent resident to remain in the State without complying with the necessary requirements for legally remaining in the State, commits an offence.

Article 5D: Attempts

Any person who attempts to commit an offence under this Chapter is subject to [insert penalty].

Article 5E: Participating as an accomplice

Any person who participates as an accomplice to an offence under this Chapter is subject to [insert penalty].

Article 5F: Organizing or directing

Any person who organizes or directs another person or persons to commit an offence under this Chapter is subject to [insert penalty].

Article 5G: Smuggling of migrants and enabling illegal stay

(1) Any person who intentionally, in order to obtain directly or indirectly a financial or material benefit, engages in conduct for the purpose of procuring, facilitating or promoting the actual or intended entry into, transit across or stay in [insert name of State] or a Protocol State of another person in breach of immigration law commits an offence.

(2) For the purposes of subsection (1), "immigration law" includes a law which has effect in [insert name of State] or in any Protocol State and which controls, in respect of some or all persons who are not nationals of that State's entitlement to enter, transit across or stay in the State;

(3) A document issued by the Government of a Protocol State certifying a matter of law in that State:

(a) shall be admissible in proceedings for an offence under this article and;

(b) shall be conclusive as to the matter certified.

Article 5H: Offences in relation to fraudulent travel or identity documents

(1) Any person who intentionally, in order to obtain directly or indirectly a financial or other material benefit, engages in conduct for the purpose of offering, distributing, producing, procuring, providing or possessing a fraudulent travel or identity document, in circumstances where the person knows or should reasonably have known or suspected that the document is to be used for the purpose of enabling the smuggling of migrants, commits an offence punishable by [insert penalty].

Article 5I: Offences in relation to smuggling of migrants

(1) Any person who intentionally, in order to obtain directly or indirectly, a financial or other material benefit, engages in conduct for the purpose of enabling a person who is not a national or a permanent resident of [insert name of State] or of a Protocol State to enter, transit across or be in that State in breach of immigration law commits an offence.

(2) For the purpose of subsection (1), "immigration law" includes a law which has effect in [insert name of State] or the Protocol State and which controls, in respect of some or all persons who are not national of that State entitlement to enter, transit across or be in the State.

(3) A document issued by the government of a Protocol State certifying a matter of law in that State:

(a) shall be admissible in proceedings for an offence under this article; and

(b) shall be conclusive as to the matter certified.

(4) A person convicted under (1) is subject to a penalty of [insert penalty range to allow sufficient judicial discretion to deal appropriately with a range of conduct].

To read the commentary on the above model suggestions, refer to the UNODC Model Law against Smuggling of Migrants

This Model Law is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

Below are selected examples of national laws that criminalize the smuggling of migrants. No particular approach is offered here as the definitive correct approach; rather, the selection is offered to provide guidance to States seeking to domestically implement the requirements of the Smuggling of Migrants Protocol. The provisions listed below are excerpts; for the full law please refer to the original legislation.

Argentina

Ley de Migraciones, Ley 25.871 arts. 116-121, of 17 December 2003.

www.gema.com.ar/ley25871.html

Australia

Australia has strict anti-smuggling legislation with penalties of imprisonment for up to 20 years. The Criminal Code Act 1995 includes a variety of offences under the umbrella of people smuggling. Division 73 includes the offence of people smuggling and aggravated offences of people smuggling.

The details are as follows:

Criminal Code Act 1995 (sects. 73.1-73.3)

Division 73—People smuggling and related offences

Subdivision A—People smuggling offences

73.1 Offence of people smuggling

(1) A person (the first person) is guilty of an offence if:

(a) the first person organises or facilitates the entry of another person (the other person) into a foreign country (whether or not via Australia); and

(b) the entry of the other person into the foreign country does not comply with the requirements under that country's law for entry into the country; and

(c) the other person is not a citizen or permanent resident of the foreign country; and

(d) the first person organises or facilitates the entry:

(i) having obtained (whether directly or indirectly) a benefit to do so; or

(ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 10 years or 1,000 penalty units, or both.

(2) Absolute liability applies to the paragraph (1)*(c)* element of the offence.

(3) For the purposes of this Code, an offence against subsection (1) is to be known as the offence of people smuggling.

73.2 Aggravated offence of people smuggling (exploitation etc.)

(1) A person (the first person) is guilty of an offence if the first person commits the offence of people smuggling in relation to another person (the victim) and any of the following applies:

(a) the first person commits the offence intending that the victim will be exploited after entry into the foreign country (whether by the first person or another);

(b) in committing the offence, the first person subjects the victim to cruel, inhuman or degrading treatment;

(c) in committing the offence, the first person's conduct:

(i) gives rise to a danger of death or serious harm to the victim; and

(ii) the first person is reckless as to the danger of death or serious harm to the victim that arises from the conduct.

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

73.3 Aggravated offence of people smuggling (at least 5 people)

(1) A person (the first person) is guilty of an offence if:

(a) the first person organises or facilitates the entry of a group of at least 5 persons (the other persons) into a foreign country (whether or not via Australia); and

(b) the entry of at least 5 of the other persons into the foreign country does not comply with the requirements under that country's law for entry into that country; and

(c) at least 5 of the other persons whose entry into the foreign country is covered by paragraph *(b)* are not citizens or permanent residents of the foreign country; and

(d) the first person organises or facilitates the entry:

(i) having obtained (whether directly or indirectly) a benefit to do so; or

(ii) with the intention of obtaining (whether directly or indirectly) a benefit.

Penalty: Imprisonment for 20 years or 2,000 penalty units, or both.

(2) Absolute liability applies to the paragraph (1)*(c)* element of the offence.

www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html

It also criminalizes the organized illegal movement of persons from or through Australia, as well as the involvement of Australian residents in such activities offshore.

The Migration Act 1958 also sets out a variety of offences related to smuggling. Specifically, sections 232A to 233A relate to the offence of smuggling, and cover for example:

- Bringing of groups of non-citizens into Australia (punishable by imprisonment for 20 years)
- Persons concerned in bringing non-citizens into Australia in contravention of the Act or harbouring illegal entrants (with a penalty of imprisonment for 10 years)
- Other offences relating to groups of non-citizens etc. (with a penalty of imprisonment for 20 years).

The Migration Act 1958 (sects. 228-233) provides for offences involving people smuggling and using fraudulent documents to enter Australia. These offences carry penalties on conviction of up to 20 years imprisonment and/or a fine. The harbouring or concealing of unlawful non-citizens in Australia is also a serious offence under the Act.

The Migration Act 1958 is available from:

www.austlii.edu.au/au/legis/cth/consol_act/ma1958118/

Austria

Fremdenpolizeigesetz, BGBL Nr. 100/2005 geändert durch BGBL Nr. 135/2009, arts. 114-118:

Article 114

(1) Any person who knowingly assists in the unlawful entry or transit of an alien into or through a Member State of the European Union or neighbouring State of Austria shall be liable to a term of imprisonment not exceeding one year imposed by a court.

(2) Any person who assists in the unlawful entry or transit of an alien into or through a Member State of the European Union or neighbouring State of Austria with the intention of unlawfully enriching himself or a third party through payment made to that end shall be liable to a term of imprisonment not exceeding two years imposed by a court.

(3) Any person who, in the last five years, has been convicted of trafficking in migrants within the meaning of paragraph 2 shall be liable to a term of imprisonment not exceeding three years. This shall include any conviction by a foreign court in proceedings conducted in accordance with the principles laid down in article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

(4) Any person who commits the act as referred to in paragraph 2 for business purposes (article 70 of the Criminal Code) or in such a way that the alien concerned is subjected

to painful conditions for a long period, in particular during transportation, shall be liable to a term of imprisonment of between six months and five years imposed by a court.

(5) Any person who commits the act as referred to in paragraph 2 as the member of a criminal association, or in such a way that the life of the alien to whom the criminal act relates is endangered, shall be liable to a term of imprisonment of between 1 and 10 years imposed by a court.

(6) Aliens whose unlawful entry or transit is assisted by the act shall not be penalised as parties to the offence (article 12 of the Criminal Code). Their expulsion or deportation may be delayed where and in so far as this is necessary in order to question them as to the facts of the case.

(7) Where a delay would be dangerous, the agencies responsible for maintaining public security shall be authorised temporarily to impound items which the perpetrator has with him or means of transport or containers used to commit the act in order to ensure confiscation of the enrichment (article 20 of the Criminal Code), forfeiture (article 20b of the Criminal Code) or seizure (article 26 of the Criminal Code). The cargo of the means of transport may be handed over to the holder of the vehicle registration document or his agent. The court shall be informed immediately of the measures which are taken.

(8) The courts of first instance shall be responsible for proceedings in connection with the act referred to in paragraph 1.

Article 115—Assisting unauthorised residence

(1) Any person who, with the intention of preventing the procedure for issuing or implementing measures terminating residence, facilitates an alien's unlawful residence in the territory of a Member State of the European Union shall be liable to a term of imprisonment not exceeding six months or to a fine not exceeding 360 on the scale of daily penalty units imposed by a court.

(2) Any person who, with the intention of enriching himself or a third party through payment of a more than negligible amount made to that end, facilitates an alien's unlawful residence in the territory of a Member State of the European Union shall be liable to a term of imprisonment not exceeding one year or to a fine not exceeding 360 on the scale of daily penalty units imposed by a court.

(3) Any person who commits the act for business purposes shall be liable to a term of imprisonment not exceeding three years.

(4) The alien who benefited or was intended to benefit from the assistance as referred to in paragraphs 1 or 2 shall not be penalised as a party to the offence.

(5) The courts of first instance shall be responsible for proceedings in connection with the acts referred to in paragraphs 1 and 2.

Article 116—Exploitation of an alien

(1) Any person who, with the intention of procuring for himself or a third party a regular income by taking advantage of the particular dependency of an alien who is

residing unlawfully in Austria, has no work permit, or is otherwise in a state of particular dependency, exploits that alien, shall be liable to a term of imprisonment not exceeding three years imposed by a court.

(2) Any person who, through that act, subjects an alien to deprivation, or exploits a large number of aliens, shall be liable to a term of imprisonment of between six months and five years.

(3) Where the act results in the death of an alien, the perpetrator shall be liable to a term of imprisonment of between 1 and 10 years.

Article 117—Entry into and arrangement of marriages for residence purposes

(1) An Austrian or an alien entitled to establish himself in Austria who enters into a marriage with an alien without the intention of leading a family life within the meaning of article 8 of the ECHR and is, or must have been, aware that the alien intends to rely on this marriage to obtain or retain a residence permit, to acquire Austrian nationality, or to prevent measures terminating residence, shall, where the act is not subject to a more stringent penalty under a different provision, be liable to a fine not exceeding 360 on the scale of daily penalty units imposed by a court.

(2) An Austrian or an alien entitled to establish himself in Austria who, with the intention of unlawfully enriching himself or a third party through payment made to that end, enters into a marriage with an alien without the intention of leading a family life within the meaning of article 8 of the ECHR and is, or must have been, aware that the alien intends to rely on this marriage to obtain or retain a residence permit, to acquire Austrian nationality, or to prevent measures terminating residence, shall, where the act is not subject to a more stringent penalty under a different provision, be liable to a term of imprisonment not exceeding one year or to a fine not exceeding 360 on the scale of daily penalty units imposed by a court.

(3) Any person who arranges or sets up marriages for business purposes even though he is, or must have been, aware that the persons concerned will rely on this marriage to obtain or retain a residence permit, to acquire Austrian nationality, or to prevent measures terminating residence, but does not intend to lead a family life within the meaning of article 8 of the ECHR shall, where the act is not subject to a more stringent penalty under a different provision, be liable to a term of imprisonment not exceeding three years imposed by a court.

(4) The alien who intends to rely on the marriage within the meaning of paragraph 1 shall not be penalized as a party to the offence.

(5) Any person who voluntarily cooperates in establishing the facts of the case before an authority responsible for criminal prosecution learns of his guilt shall not be penalized under paragraph 1.

Article 118—Adoption for residence purposes and arrangement of adoptions for residence purposes of sui juris aliens

(1) An Austrian or an alien entitled to establish himself in Austria who adopts a sui juris alien and submits an application for approval of that adoption to the wardship court

even though he is, or must have been, aware that the alien will rely on this adoption to obtain or retain a residence permit, to acquire Austrian nationality, or to prevent measures terminating residence, but does not intend to maintain a relationship similar to that between natural parents and children, shall, where the act is not subject to a more stringent penalty under a different provision, be liable to a fine not exceeding 360 on the scale of daily penalty units imposed by a court.

(2) An Austrian or an alien entitled to establish himself in Austria who, with the intention of unlawfully enriching himself or a third party through payment made to that end, adopts a sui juris alien even though he is, or must have been, aware that the alien will rely on this adoption to obtain or retain a residence permit, to acquire Austrian nationality, or to prevent measures terminating residence, but does not intend to maintain a relationship similar to that between natural parents and children, shall, where the act is not subject to a more stringent penalty under a different provision, be liable to a term of imprisonment not exceeding one year or to a fine not exceeding 360 on the scale of daily penalty units imposed by a court.

(3) Any person who arranges or sets up adoptions as referred to in paragraphs 1 or 2 for business purposes (article 70 of the Criminal Code) even though he is, or must have been, aware that the persons concerned will rely on this adoption to obtain or retain a residence permit, to acquire Austrian nationality, or to prevent measures terminating residence, but does not intend to maintain a relationship similar to that between natural parents and children, shall, where the act is not subject to a more stringent penalty under a different provision, be liable to a term of imprisonment not exceeding three years imposed by a court.

(4) The adopted child shall not be penalised as a party to the offence under paragraph 1.

(5) Any person who voluntarily cooperates in establishing the facts of the case before an authority responsible for criminal prosecution learns of his guilt shall not be penalized under paragraph 1.

Belgium

Article 77bis of the Belgian Law of 15 December 1980 concerning the access to the territory, the residence, the settlement and the removal of foreigners

"Helping, in one way or another, either directly or through an intermediary, a person who is not a national of a Member State of the European Union, to enter into, transit over or reside on the territory of such an aforementioned Member State, or of a State party to an international agreement on the crossing of the external borders that is binding on Belgium, in violation of the legislation of the said State, with the aim to obtaining, either directly or indirectly, a profit".

Bosnia and Herzegovina

Criminal Code of Bosnia and Herzegovina (2003), article 189 on smuggling of persons:

"Whoever, for financial or material benefit, engages in illegal transport of other persons across the state border, or whoever enables another person to cross the border illicitly, shall be punished by imprisonment for a term between six months and five years."

www.iccnow.org/documents/criminal-code-of-bih.pdf

Brazil

Ley 6815/80 (art. 125)

http://lba.inpa.gov.br/lba/documentos/Lei681580.pdf

Bulgaria

Penal Code, article 280:

Art. 280. (Amend. and suppl., SG 28/82; revoked SG 37/89; New SG 62/97)

(1) Who takes across the border of the country individuals or groups of people without permit of the respective bodies of the authority or, though by a permit but not at the places determined for that purpose, shall be punished by imprisonment of one to six years and a fine of five hundred to one thousand levs.

(2) The punishment shall be imprisonment of one to ten years, a fine of one thousand to three thousand levs and a confiscation of a part or the whole property of the perpetrator if:

1. a person who has not accomplished 16 years of age has been taken across the border;
2. the transfer has taken place without the consent of the person;
3. the person transferred across the border is not a Bulgarian citizen;
4. motor, air or other vehicle has been used;
5. the transfer has been organized by a group or organization or has been fulfilled with the participation of an official who has used his official status.

(3) In the cases of para. 2, item 4 the vehicle shall be seized in favour of the state if it has been owned by the perpetrator.

Art. 281. (Amend., SG 28/82; revoked SG 37/89)

www.mvr.bg/NR/rdonlyres/330B548F-7504-433A-BE65-5686B7D7FCBB/0/04_Penal_Code_EN.pdf

Canada

Immigration and Refugee Protection Act (2001). Below are excerpts from sections 117 to 121.

Organizing entry into Canada

117 (1) No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act.

Penalties—fewer than 10 persons

(2) A person who contravenes subsection (1) with respect to fewer than 10 persons is guilty of an offence and liable

(a) on conviction on indictment

i. for a first offence, to a fine of not more than $500,000 or to a term of imprisonment of not more than 10 years, or to both; or

ii. for a subsequent offence, to a fine of not more than $1,000,000 or to a term of imprisonment of not more than 14 years, or to both; and

(b) on summary conviction, to a fine of not more than $100,000 or to a term of imprisonment of not more than two years, or to both.

Penalty—10 persons or more

(3) A person who contravenes subsection (1) with respect to a group of 10 persons or more is guilty of an offence and liable on conviction by way of indictment to a fine of not more than $1,000,000 or to life imprisonment, or to both.

Offence—trafficking in persons

118. (1) No person shall knowingly organize the coming into Canada of one or more persons by means of abduction, fraud, deception or use or threat of force or coercion.

Disembarking persons at sea

119. A person shall not disembark a person or group of persons at sea for the purpose of inducing, aiding or abetting them to come into Canada in contravention of this Act.

Penalties

120. A person who contravenes section 118 or 119 is guilty of an offence and liable on conviction by way of indictment to a fine of not more than $1,000,000 or to life imprisonment, or to both.

Aggravating factors

121. (1) The court, in determining the penalty to be imposed under subsection 117(2) or (3) or section 120, shall take into account whether

(a) bodily harm or death occurred during the commission of the offence;

(b) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization;

(c) the commission of the offence was for profit, whether or not any profit was realized; and

(d) a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of the offence.

Sections 122 establishes that no persons shall, in order to contravene the Immigration and Refugee Protection Act, possess or use, import, export or deal in, a passport, visa or other document of Canadian or foreign origin. The penalty for the offence is up to 5 years' imprisonment in the case of possession of documents to contravene that Act and up to 14 years' imprisonment in the case of using documents to contravene that Act for the purpose of entering or remaining in Canada or for importing, exporting or dealing in such documents.

Section 127 makes it illegal to communicate directly or indirectly, by any means, false or misleading information with intent to induce or deter immigration to Canada. The penalty for that offence on conviction on indictment is up to 5 years' imprisonment and/or a fine not exceeding $100,000. On summary conviction the penalty is up to 2 years' imprisonment and/or a fine not exceeding $50,000.

www.canamglobal.com/indexacts2.html

Costa Rica

Below is an excerpt from an International Organization for Migration (IOM) press release on a new immigration law in Costa Rica.

> "Migrant smugglers now face prison terms of two to six years under Costa Rica's new immigration law, which was recently approved by the National Assembly and signed by President Oscar Arias.
>
> "The IOM Regional Office in San José, acting on a request from the Costa Rican Government, provided technical expertise to legislators, including support on issues related to the protection of migrants, migration management, human trafficking and migrant smuggling. Several specific recommendations of IOM related to migrant smuggling and human trafficking were integrated into the final text.
>
> "The new law, which takes effect in February 2010, now defines and recognizes migrant smuggling and human trafficking as two separate but inter-connected crimes."

International Organization for Migration, "Costa Rica's new immigration law provides jail terms for migrant smugglers", 25 August 2009, available from www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnAM/cache/offonce;jsessionid=B0BDE905339DA4AA3E79C1310EC4EA3B.worker01?entryId=25992

Ley de Migración y Extranjería, No. 8487, articles 245-247 (2005):

> *Article 245*

Imprisonment of two to six years will be imposed to any person who: a) With intent to smuggle, guides or transports people in or out of the country through locations unauthorized by the General Directorate, evading the established migration posts or using fake documents. b) Who, for the purpose of trafficking in persons shelters, hides, or conceals foreign people who have entered or remain in the country irregularly.

This punishment will increase by one third if the author or accomplice is a public officer or whenever children are involved in the execution of such crimes.

Article 246

Real estate or goods such as vehicles, instruments, equipment and other objects used in committing the above crime will be seized or confiscated depending on the case. If requested, such goods may be transferred to the Ministry of the Interior and Police, which will secure them to avoid possible deterioration and destruction. The Ministry may use the goods to fulfil the purposes of the General Migration Directorate. The Ministry may also manage them or set up a trust fund for them in a bank of the National Banking System. In case of a guilty sentence, the goods used in the perpetration of the crime will be confiscated and the national registry will process the appropriate registration.

Article 247

Any foreigner who has entered the Costa Rican territory without fulfilling the conditions for its entrance and remains in the country irregularly, and has been a victim, suffered damage from or witnessed an act of trafficking in persons, irregular immigration, or sexual exploitation, will be exempt from administrative responsibility and will not be deported or expelled if he or she cooperates with the migration authorities in denouncing the authors or accomplices of such trafficking, and the police authorities in providing them with the necessary information or testifying in the trial against the perpetrators. It will be the General Directorate's prerogative to grant such benefit, or agree on the repatriation of such people.

From the Penal Code:

- Article 359. Forgery of public and authentic documents
- Article 360. Ideological forgery
- Article 363. Use of false document

Ley General de Migración y Extranjería (1987)

- Article 86 of the General Law on Migration and Alien Affairs stipulates that foreigners using false documents in the migration process will be deported.
- Article 98 stipulates that employers issuing forged contracts will be penalized with imprisonment.
- Article 118, subparagraph 2 stipulates deportation for the offence of using false documents in the migration process.
- Article 119 provides for foreigners to be deported to their country of origin or a third country that will admit them.

Croatia

From the Criminal Code:

Illegal Transfer of Persons Across the State Border

Article 177

(1) Whoever, for lucrative purposes, illicitly transfers across the state border a person or a number of persons shall be punished by a fine or by imprisonment not exceeding three years.

(2) If during the perpetration of the criminal offense referred to in paragraph 1 of this Article, the lives and the security of persons transferred across the state border are endangered or they are treated in an inhumane or humiliating way, the perpetrator shall be punished by imprisonment for six months to five years.

(3) If the criminal offence referred to in paragraph 1 of this Article is committed while the perpetrator is a member of a group or a criminal organization, the perpetrator shall be punished for one to ten years.

(4) A person who attempts to commit a criminal offence referred to in paragraph 1 of this Article shall be punished.

www.vsrh.hr/CustomPages/Static/HRV/Files/Legislation__Criminal-Code.pdf

Czech Republic

From the Criminal Code, section 171a:

(1) A person who makes arrangements for another person to illegally cross the State border, or who enables another person to illegally cross the State border shall be punished by imprisonment for a term of up to one year or by a fine.

(2) The perpetrator shall be punished by imprisonment for six months to three years,

a. If he commits the act described in paragraph 1 with the intention to cover up or to facilitate another crime

b. If he commits such act for payment, or

c. If he commits such act as a member of an organized group

Criminal Code, Section 176 Forging and altering an official document

(1) A person who forges an official document or substantially alters its contents with the intention that it should be used as an authentic document, or who uses such document as an authentic document, shall be punished by imprisonment for a term of up to two years or by a fine.

(2) The perpetrator shall be punished by imprisonment for one year to five years,

a. If he commits the act described in paragraph 1 as a member or an organized group, or

b. If he causes extensive damage to another especially serious consequence by such act

Democratic Republic of the Congo

Code Pénal Congolais (last amended November 2004)

www.unhcr.org/refworld/country,,NATLEGBOD,,COD,456d621e2,47303b9e2,0.html

Dominican Republic

Law 137-03 on smuggling of migrants and trafficking in persons includes sanctions for these crimes. Article 2 establishes a punishment of imprisonment for 10 to 15 years and a fine equivalent to no less than 150 or more than 250 times the minimum salary for the smuggling of migrants.

Article 7 establishes aggravating circumstances that are punishable by a further five years in addition to the main sentence. Article 7, subparagraph *(h)* establishes document fraud as such an aggravating circumstance.

Law No. 285-04, article 68 subparagraph *(b)* establishes that a foreigner's entry onto national territory with fraudulent or incomplete documentation is illegal. Subparagraph *(c)* establishes that the entry is illegal if genuine documentation that was fraudulently obtained is used.

Estonia

The Penal Code (2001) states:

> § 259. Illegal transportation of aliens across State border or temporary borderline of Republic of Estonia
>
> 1. Illegal transportation of an alien across the State border or temporary borderline of the Republic of Estonia is punishable by a pecuniary punishment or up to one year of imprisonment.
>
> 2. The same act, if committed:
>
> 1) by a group, or
>
> 2) by using violence,
>
> is punishable by a pecuniary punishment or up to 3 years' imprisonment.
>
> 3. An act provided for in subsection (1) or (2) of this section, if serious health damage is thereby caused, is punishable by 4 to 12 years' imprisonment.

www.nottingham.ac.uk/shared/shared_hrlcicju/Estonia/Penal_Code__English_.doc

European Union

Article 27 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders stipulates that the Contracting Parties should undertake "to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside in the territory of one of the Contracting Parties in breach of that Contracting Party's law on the entry and residence of aliens."

Article 27

1. The Contracting Parties undertake to impose appropriate penalties on any person who, for financial gain, assists or tries to assist an alien to enter or reside within the territory of

one of the Contracting Parties in breach of that Contracting Party's laws on the entry and residence of aliens.

2. If a Contracting Party is informed of actions as referred to in paragraph 1 which are in breach of the law of another Contracting Party, it shall inform the latter accordingly.

3. Any Contracting Party which requests another Contracting Party to prosecute, on the grounds of a breach of its own laws, actions as referred to in paragraph 1 must specify, by means of an official report or a certificate from the competent authorities, the provisions of law that have been breached.

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922(02):EN:HTML

Finland

The Penal Code of Finland states:

"Chapter 17, Offences against public order (563/1998) …

Section 8—Arrangement of illegal immigration (563/1998)

(1) A person who

(1) brings or attempts to bring to Finland a foreigner without a valid passport, visa or residence permit,

(2) arranges or procures transport to Finland for a person referred to in subparagraph (1), or

(3) gives to another person a passport, visa or residence permit that is false, falsified or issued to someone else, for use when entering the country, shall be sentenced for arrangement of illegal immigration to a fine or to imprisonment for at most two years.

(2) An act which, when taking into account the motives of the person committing it and the circumstances pertaining to the safety of the foreigner in his/her home country or country of permanent residence, and when assessed as a whole, is to be deemed committed under vindicating circumstances, does not constitute arrangement of illegal immigration.

www.finlex.fi/pdf/saadkaan/E8890039.PDF

France

From the Code on entry and residence of aliens and on asylum:

Article L622-1

Anyone who facilitates or attempts to facilitate the illegal entry into, transit across or the illegal residence, of an alien in France, through direct or indirect help, will be punished by five years' imprisonment and a fine of €30,000.

> … Anyone who facilitates or attempts to facilitate the illegal entry into, transit across or the illegal residence, of an alien, within the territory of another State party to the convention implementing the Schengen agreement will be punished with the same penalty.

The Penal Code of France refers to "inhuman acts" and "degrading acts" in two articles: Article 212-1 stipulates that "Deportation, enslavement or the massive and systematic practice of summary executions, abduction of persons followed by their disappearance, of torture or inhuman acts, inspired by political, philosophical, racial or religious motives, and organized in pursuit of a concerted plan against a section of a civil population are punished by criminal imprisonment for life."

Article L622-5 of the Code on entry and residence of aliens and on asylum criminalizes aggravating circumstances. It provides for a penalty of 10 years' imprisonment and a fine of €750,000 when the crime is committed by an organized group, or in circumstances that directly expose migrants to an immediate risk of death or serious bodily harm, or living conditions or conditions of transport, work or accommodation that are incompatible with human dignity. A further aggravating circumstance is the removal of an underage migrant from his or her family or traditional environment as a result of the crime.

Guatemala

The Ley de Migración, article 103 establishes incommutable imprisonment for five to eight years as the penalty for procuring or facilitating illegal entry.

Article 104 establishes incommutable imprisonment for five to eight years as the penalty for procuring or facilitating illegal transit.

Pursuant to article 108 the sanctions shall be increased by one third when the crimes are committed against a minor, in conditions or by means that jeopardize the health, integrity or life of persons, or when the crimes are committed by a public official.

www.migrantesenlinea.org/imagesFTP/4449.Ley_de_Migracion_de_Guatemala.doc

The Código Penal, Decreto No. 17-73, article 321 establishes that forging a public document or altering an authentic public document is punishable by two to six years' imprisonment.

Honduras

Código Penal, Decreto No. 144-83, article 195

Kazakhstan

Criminal Code, Law No. 167 of 16 July 1997, article 330-2, Organization of illegal migration

Latvia

Criminal Code, 5 November 1998, article 285, unlawful conveyance of a person across a State border:

> (1) For a person who commits unlawfully conveying a person across a State border, in violation of provisions regarding border crossing, the applicable sentence is deprivation of liberty for a term not exceeding five years.

(2) For a person who commits the same acts, if commission thereof is repeated or by a State official utilising his or her official position, the applicable sentence is deprivation of liberty for a term not exceeding seven years, with or without confiscation of property.

(3) For a person who commits unlawfully conveying a large number of persons, that is, more than five persons at one time, across a State border, the applicable sentence is deprivation of liberty for a term of not less than five and not exceeding ten years, with confiscation of property.

www.unhcr.org/refworld/country,,,LEGISLATION,LVA,4562d8b62,3ae6b4ef14,0.html

Lithuania

The Criminal Code states:

Article 292. Illegal Transportation of People across the National Border

1. Any person who illegally transports a foreign national without a residence in the Republic of Lithuania across the national border of the Republic of Lithuania, or conceals a foreign national who illegally crossed the national border or transports him through the territory of Lithuania, shall be punished by detention or imprisonment for a term of up to six years.

2. Any person who organizes the illegal transportation of foreign nationals without a residence in the Republic of Lithuania across the national border of the Republic of Lithuania, or organizes the concealment of people who illegally crossed the national border or their transportation through the territory of Lithuania, shall be punished by imprisonment of 4 to 10 years.

3. A legal person shall also be liable for the acts described in this article.

Article 293. Organization of illegal trips by nationals of the Republic of Lithuania with the purpose of procuring residence or abandoning without any help

1. Any person who organizes illegal trips by nationals of the Republic of Lithuania for the purpose of seeking asylum or illegal work or residence abroad for any other reason or who falsely promises legal status abroad shall be penalized by detention or a prison term of up to seven years.

2. A legal person shall also be liable for the acts described in this article.

Malaysia

Immigration Act 1959/63, sect. 55A: Conveying a person to Malaysia contrary to this Act

http://jpt.mohe.gov.my/RUJUKAN/akta/akta%20imigresen.pdf

Mexico

In the Ley General de Población (1974) Article 138 establishes the sanction of 6 to 12 years' imprisonment and a fine equivalent to the minimum wage for 100 to 10,000 days in the

Federal District where the crime was committed for the offence of conveying nationals or non-nationals to other countries without the correct documentation.

Article 125 establishes that a non-national committing the crimes described in articles 115, 116, 117, 118 and 138 will be expelled.

In the Ley Federal contra la delincuencia organizada (1996), article 2 subparagraph III criminalizes the offence of the smuggling of migrants by an organized criminal group. Article 4 subparagraph II establishes the penalties for members of an organized criminal group committing the offence of smuggling of migrants, and article 5 subparagraph II establishes increased penalties when there are aggravating circumstances.

The Código Penal Federal (1931), article 366, criminalizes the smuggling of minors for financial or material benefit.

Netherlands

Criminal Code, article 197a Smuggling of human beings (since 1 January 2005):

> 1. Whosoever provides assistance to another person to acquire entry to the Netherlands or to transit the Netherlands, another Member State of the European Union, Iceland, Norway or any state which has acceded to the Protocol against the Smuggling of Migrants by Land, Sea and Air concluded in New York on 15 November 2000 supplementing the Convention against Transnational Organized Crime concluded on 15 November 2000 in New York, or provides that person with an opportunity or the means or information enabling him to do so, whilst cognizant of the fact or having serious reason to believe that the said entry or transit is illegal, will be guilty of the smuggling of human beings and receive a penal sentence of a maximum of four years or a pecuniary penalty of the fifth category.
>
> 2. Whosoever in pursuit of gain provides assistance to another person to acquire residence in the Netherlands or another Member State of the European Union, Iceland, Norway or any state which has acceded to the Protocol mentioned in the first paragraph, or provides that person with an opportunity or the means or information enabling him to do so, whilst cognizant of the fact or having serious reason to believe that the said residence is illegal, will be punished with a penal sentence of a maximum of four years or a pecuniary penalty of the fifth category.
>
> 3. If one of the offences described in the first and third paragraphs be committed whilst exercising any office or practising any profession, a penal sentence of a maximum of six years or a pecuniary penalty of the fifth category will be awarded and the holder may be disqualified from holding that office or practicing that profession and the judge may order his sentence to be made public.
>
> 4. If one of the offences described in the first and third paragraphs be committed by a person who makes a profession of doing so or who habitually does so, or by several persons acting in association, a penal sentence of a maximum of eight years or a pecuniary penalty of the fifth category will be awarded.
>
> 5. If one of the offences described in the first and third paragraphs results in severe bodily injuries or it is feared that a person's life may be in jeopardy, a penal sentence of a maximum of 12 years or a pecuniary penalty of the fifth category will be awarded.

6. If one of the offences described in the first and third paragraphs results in death, a penal sentence of a maximum of 15 years and a pecuniary penalty of the fifth category will be awarded.

New Zealand

From the Crimes Act 1961

98C Smuggling migrants

(1) Every one is liable to the penalty stated in subsection (3) who arranges for an unauthorised migrant to enter New Zealand or any other State, if he or she—

(a) does so for a material benefit; and

(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant.

(2) Every one is liable to the penalty stated in subsection (3) who arranges for an unauthorised migrant to be brought to New Zealand or any other State, if he or she—

(a) does so for a material benefit; and

(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant; and

(c) either—

(i) knows that the person intends to try to enter the State; or

(ii) is reckless as to whether the person intends to try to enter the State.

(3) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding $500,000, or both.

(4) Proceedings may be brought under subsection (1) even if the unauthorised migrant did not in fact enter the State concerned.

(5) Proceedings may be brought under subsection (2) even if the unauthorised migrant was not in fact brought to the State concerned.

Section 98C: inserted, on 18 June 2002, by section 5 of the Crimes Amendment Act 2002 (2002 No 20).

www.legislation.govt.nz/act/public/1961/0043/latest/DLM328720.html

Nicaragua

Ley No 240. Ley de control del tráfico de migrantes ilegales

Pursuant to article 22, the smuggling of migrants is punishable by four to eight years' imprisonment and a fine.

The sanction for assisting in the crime or harbouring irregular migrants is one to four years' imprisonment and a fine.

www.unhcr.org/refworld/country,,,LEGISLATION,NIC,4562d94e2,3afff5134,0.html

Panama

The Código Penal, article 310-A establishes the sanction of 5 to 10 years' imprisonment for trafficking in persons and procuring illegal entry.

Law 41 of 2 October 2000 penalizes the laundering of money derived from international trafficking in persons.

www.acnur.org/biblioteca/pdf/01036.pdf

Peru

Código Penal, article 303-A

www.devida.gob.pe/documentacion/Decreto%20Legislativo%20635-CODIGO%20PENAL.doc

Portugal

Statutory Law on Foreigners (1998), article 134-A, subparagraph 2:

> Anyone who promotes or facilitates, in any way, illegal entry, residence or transit of aliens across the national territory, to obtain benefit, is punished by one to four years' imprisonment.

Republic of Korea

> The Immigration Control Act, article 12-2 (Ban on Provision of Ships, etc.), states:
>
> (1) No person shall provide or arrange ships, etc., passports, or visa, boarding tickets, and other documents and goods usable for entry into or departure from the country, for the purpose of illegally allowing any foreigner to enter or depart from the country or having him illegally enter other country via the Republic of Korea.
>
> (2) No person shall harbour or allow any foreigner who has illegally entered the Republic of Korea to flee within the country, or provide or arrange traffic means for such purposes.
>
> [This article newly inserted by Act No. 5434, Dec. 13, 1997]

www.asianlii.org/kr/legis/laws/ica228/

Romania

An amendment to Law No. 482/2004 on modifying and completing Government Emergency Ordinance No. 194/2002 on the regime regarding aliens in Romania reads as follows:

> Facilitating the illegal stay of aliens on Romanian territory
>
> 1. Intentional facilitation, through any means, of the illegal stay of aliens on Romanian territory shall represent a major offence and shall be sanctioned with prison from 6 months to 5 years.

2. An offence described in paragraph 1 committed under the following circumstances:

(a) Where two or more persons act together;

(b) Where serious injury or violence is perpetrated against the aliens shall be punishable with a prison term of 2 years to 8 years.

3. If the offence results in the death of the alien the sentence shall be a prison sentence of 3 to 15 years.

4. Attempts to commit the offence shall be penalized.

Russian Federation

From the Criminal Code: Article 322.1 (introduced in December 2004), on organization of illegal migration:

The organization of the illegal migration of non-citizens, their transit or illegal stay on the territory of the Russian Federation may be punishable with two years' imprisonment or the payment of a fixed fine.

http://zakony.com.ua/statya_3221_organizacia_nezako.html

Serbia

From the Criminal Code, article 350, Illegal Crossing of State Border and Human Trafficking

(1) Whoever without a required permission crosses or attempts to cross the border of Serbia, under arms or by use of force, shall be punished by imprisonment up to one year.

(2) Whoever enables another illegal crossing of the Serbian border or illegal sojourn or transit through Serbia to a person who is not a citizen of Serbia with intent to acquire a benefit for himself or another shall be punished by imprisonment of three months to six years.

(3) If the offence specified in paragraph 2 of this Article is committed by an organized group, by abuse of authority or in a manner endangering the lives and health of persons whose illicit crossing of the Serbian border, sojourn or transit is being facilitated or if a larger number of persons is being smuggled the perpetrator shall be punished by imprisonment from one to ten years.

(4) The means intended or used for commission of the offence specified in paragraphs 1 through 3 of this Article shall be impounded.

www.legislationline.org/download/action/download/id/901/file/576c23dc41967e427086bf4c2b45.pdf

Switzerland

Loi fédérale du 16 décembre 2005 sur les étrangers (LEtr; RS 142.20) on criminal provisions against encouraging the illegal entry, exit and stay of foreign nationals in Switzerland, article 116, available from:

www.admin.ch/ch/f/as/2007/5437.pdf

Turkey

From the Criminal Code (2004):

> Section 2 Migrant Smuggling and Human Trafficking
>
> *Article 79*
>
> (1) An imprisonment for a term of three to eight years and a judicial fine of up to ten thousand days shall be imposed on those who, through illegal ways,
>
> *(a)* enable a foreigner to enter into or remain in the country
>
> *(b)* enable a Turkish citizen or foreigner to go abroad
>
> With the purpose of obtaining material benefit either directly or indirectly
>
> (2) Where the offences referred to in the above paragraphs are committed by perpetrators acting as an organization, the penalty to be imposed shall be increased by half.
>
> (3) Where the offences referred to in the above paragraphs are committed by perpetrators acting as a legal entity, the relevant security measures will be taken for that legal entity.

More information is available from:

www.todayszaman.com/tz-web/detaylar.do?load=detay&link=131696

Ukraine

The Criminal Code (2001) provides that the organization of the smuggling of foreign nationals into Ukraine shall be punished by imprisonment of two to five years.

United Kingdom of Great Britain and Northern Ireland

Immigration Act 1971:

> Section 25, Assisting unlawful immigration to member State
>
> (1) A person commits an offence if he—
>
> *(a)* does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union,
>
> *(b)* knows or has reasonable cause for believing that the act facilitates the commission of a breach of immigration law by the individual, and

(c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.

(6) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

Nationality, Immigration and Asylum Act 2002:

143 Assisting unlawful immigration, &c.

The following shall be substituted for section 25 of the Immigration Act 1971 (c. 77) (assisting illegal entry)—

25 Assisting unlawful immigration to member State

(1) A person commits an offence if he—

(a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union,

(b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of immigration law by the individual, and

(c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.

(2) In subsection (1) "immigration law" means a law which has effect in a member State and which controls, in respect of some or all persons who are not nationals of the State, entitlement to—

(a) enter the State,

(b) transit across the State, or

(c) be in the State.

(3) A document issued by the government of a member State certifying a matter of law in that State—

(a) shall be admissible in proceedings for an offence under this section, and

(b) shall be conclusive as to the matter certified.

(4) Subsection (1) applies to anything done—

(a) in the United Kingdom,

(b) outside the United Kingdom by an individual to whom subsection (5) applies, or

(c) outside the United Kingdom by a body incorporated under the law of a part of the United Kingdom.

(5) This subsection applies to—

(a) a British citizen,

(b) a British overseas territories citizen,

(c) a British National (Overseas),

(d) a British Overseas citizen,

(e) a person who is a British subject under the British Nationality Act 1981 (c. 61), and

(f) a British protected person within the meaning of that Act.

(6) A person guilty of an offence under this section shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding 14 years, to a fine or to both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

www.opsi.gov.uk/acts/acts2002/ukpga_20020041_en_1

United States of America

Immigration and Nationality Act

Sec. 274. [8 U.S.C. 1324]

(a) Criminal Penalties.-

(1) (A) Any person who-

(i) knowing that a person is an alien, brings to or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law, shall be punished as provided in subparagraph (B); or

(v) (I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts,

(B) A person who violates subparagraph (A) shall, for each alien in respect to whom such a violation occurs-

(i) in the case of a violation of subparagraph (A)(i) or (v)(I) 2/ or in the case of a violation of subparagraph (A)(ii), (iii), or (iv) in which the offense was done for the purpose of commercial advantage or private financial gain, 3/ be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

(ii) in the case of a violation of subparagraph (A)(ii), (iii), (iv), or (v)(II), 4/ be fined under title 18, United States Code, imprisoned not more than 5 years, or both;

(iii) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) 5/ during and in relation to which the person causes serious bodily injury (as defined in section 1365 of title 18, United States Code) to, or places in jeopardy the life of, any person, be fined under title 18, United States Code, imprisoned not more than 20 years, or both; and

(iv) in the case of a violation of subparagraph (A)(i), (ii), (iii), (iv), or (v) resulting in the death of any person, be punished by death or imprisoned for any term of years or for life, fined under title 18, United States Code, or both.

(C) It is not a violation of clauses (ii) or (iii) of subparagraph (A), or of clause (iv) of subparagraph (A) except where a person encourages or induces an alien to come to or enter the United States, for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least one year.

(2) Any person who, knowing or in reckless disregard of the fact that an alien has not received prior official authorization to come to, enter, or reside in the United States, brings to or attempts to bring to the United States in any manner whatsoever, such alien, regardless of any official action which may later be taken with respect to such alien shall, for each alien in respect to whom a violation of this paragraph occurs 6/ -

(A) be fined in accordance with title 18, United States Code, or imprisoned not more than one year, or both; or

(B) in the case of-

(i) an offense committed with the intent or with reason to believe that the alien unlawfully brought into the United States will commit an offense against the United States or any State punishable by imprisonment for more than 1 year,

(ii) an offense done for the purpose of commercial advantage or private financial gain, or

(iii) an offense in which the alien is not upon arrival immediately brought and presented to an appropriate immigration officer at a designated port of entry, be fined under title 18, United States Code, and shall be imprisoned, in the case of a first or second violation of subparagraph (B)(iii), not more than 10 years, in the case of a first or second violation of subparagraph (B)(i) or (B)(ii), not less than 3 nor more than 10 years, and for any other violation, not less than 5 nor more than 15 years.

(3) (A) Any person who, during any 12-month period, knowingly hires for employment at least 10 individuals with actual knowledge that the individuals are aliens described in subparagraph (B) shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

(B) An alien described in this subparagraph is an alien who-

(i) is an unauthorized alien (as defined in section 274A(h)(3)), and

(ii) has been brought into the United States in violation of this subsection.

(4) In the case of a person who has brought aliens into the United States in violation of this subsection, the sentence otherwise provided for may be increased by up to 10 years if--

(A) the offense was part of an ongoing commercial organization or enterprise;

(B) aliens were transported in groups of 10 or more; and

(C) (i) aliens were transported in a manner that endangered their lives; or

(ii) the aliens presented a life-threatening health risk to people in the United States.

www.uscis.gov/portal/site/uscis/menuitem.f6da51a2342135be7e9d7a10e0dc91a0/?vgnextoid=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&vgnextchannel=fa7e539dc4bed010VgnVCM1000000ecd190aRCRD&CH=act

Recommended resources

United Nations Office on Drugs and Crime. *Model Law against Smuggling of Migrants.*

The UNODC *Model Law against Smuggling of Migrants* is being developed to assist States in implementing the provisions contained in the Smuggling of Migrants Protocol supplementing the Organized Crime Convention. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The *Model Law* covers not only the criminalization of smuggling of migrants and related offences, but also the different aspects of assistance to victims as well as establishing cooperation between different State authorities and non-governmental organizations. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples.

The *Model Law* is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The *Guides* lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The *Guides* have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

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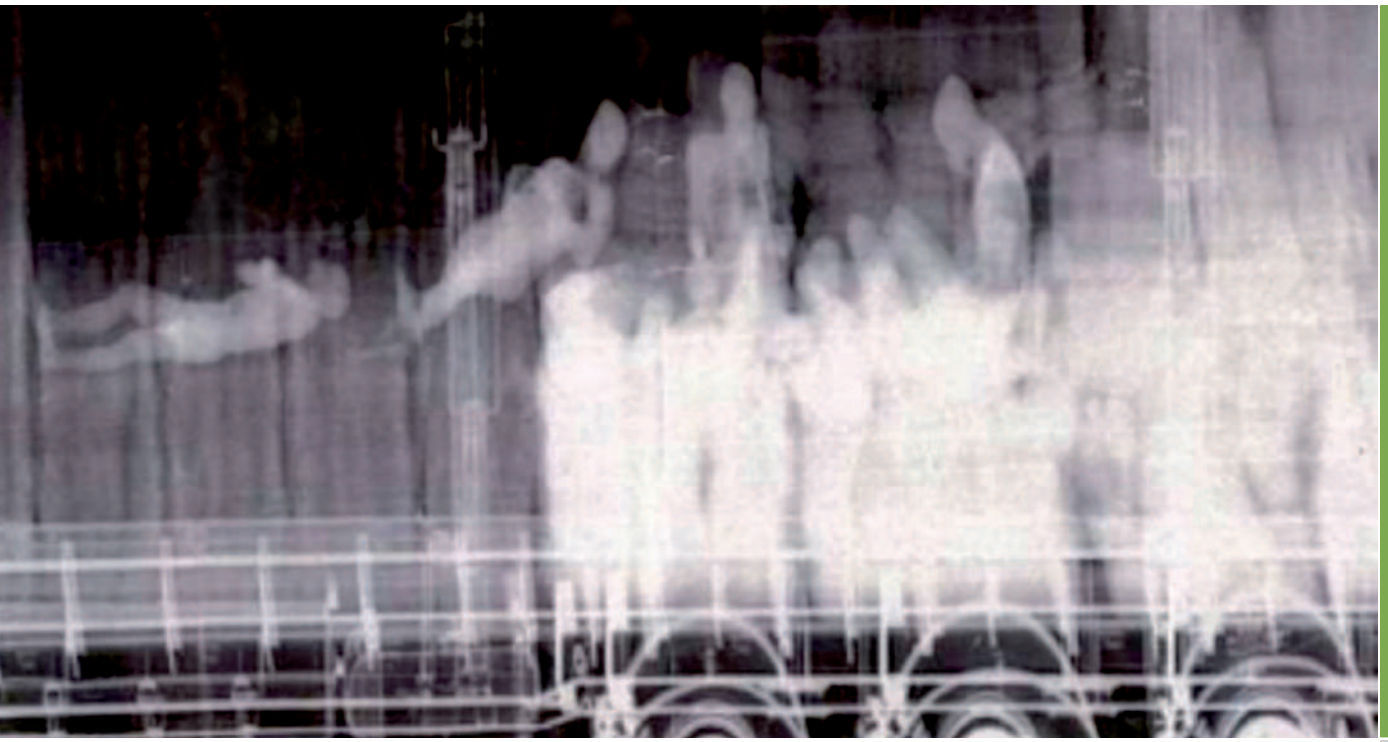

Toolkit to Combat Smuggling of Migrants

Tool 6
International criminal justice cooperation

6

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Toolkit to Combat Smuggling of Migrants

Tool 6

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Contents

Overview 1

6.1 The need to cooperate in combating smuggling of migrants 3

6.2 Types of international cooperation 5

6.3 The legal basis for formal cooperation 8

6.4 Challenges of international cooperation 12

Cooperation mechanisms under the Organized Crime Convention

6.5 Extradition 15

6.6 Request for extradition: checklist 22

6.7 Mutual legal assistance 25

6.8 Request for mutual legal assistance: checklist 34

6.9 Joint investigation teams 37

Cooperation mechanisms under the Smuggling of Migrants Protocol

6.10 An overview of international cooperation as provided for in the Smuggling of Migrants Protocol 41

6.11 Cooperation and assistance in relation to smuggling of migrants by sea 46

6.12 Border cooperation 48

6.13 Cooperation in relation to travel and identity documents 53

6.14 Cooperation in relation to training and technical assistance 57

6.15 Cooperation for the return of smuggled migrants 58

6.16 Information exchange 64

6.17 Other agreements or arrangements for cooperation 69

Overview

The smuggling of migrants—a crime that, by its very nature, transcends State and regional boundaries—cannot be combated unless the criminal justice response to it also crosses borders. Tool 6 explores international criminal justice cooperation.

Overview of international cooperation

The first section of the tool is divided into four subsections, as follows:

6.1 stresses the need for international criminal justice cooperation;

6.2 explains the different types of international cooperation that can be mounted against the transnational organized crime of smuggling of migrants;

6.3 outlines the basis for formal international cooperation;

6.4 flags up some of the challenges that may arise during cooperation.

Cooperation mechanisms under the Organized Crime Convention

The second section of the tool is divided into five subsections, as follows:

6.5 sets out the extradition mechanisms;

6.6 contains a checklist to be used when making requests for extradition;

6.7 explains the mutual legal assistance mechanisms;

6.8 contains a checklist to be used when making requests for mutual legal assistance;

6.9 lays the foundations for joint investigation teams into smuggling of migrants.

Cooperation mechanisms under the Smuggling of Migrants Protocol

The third section of the tool is divided into eight subsections, as follows:

6.10 provides an overview of the international cooperation requirements specifically provided for in the Smuggling of Migrants Protocol;

6.11 discusses the cooperation and assistance required in relation to smuggling of migrants by sea;

6.12 specifically discusses border cooperation;

6.13 addresses cooperation in relation to travel and identity documents;

6.14 addresses the requirement for cooperation in training and technical assistance and describes some promising practices;

6.15 details the cooperation required for the return of smuggled migrants;

6.16 focuses on information exchange;

6.17 notes that States seeking to implement measures that go beyond the minimum requirements of the Protocol may enter into other cooperative agreements and arrangements.

Overview of International Cooperation

6.1 The need to cooperate in combating smuggling of migrants

As smuggling of migrants is a transnational crime, international cooperation is an essential prerequisite to preventing and combating it. As the smugglers of migrants form closely meshed networks that transcend national and regional borders, so too must criminal justice responses be coordinated among States in order to be effective. New routes and modi operandi used by smugglers of migrants demonstrate the continuing evolution and growing complexity of smuggling networks and their operations, and highlight the importance of strong international cooperation in the investigation, prevention and prosecution of the smuggling of migrants. Such cooperation must take place at every level, from policing at borders to the development of anti-migrant smuggling policy and the assistance and repatriation of smuggled migrants.

While law enforcement cooperation at the international level is necessary to combat smuggling of migrants, such cooperation cannot be limited to cooperation at State borders alone. While law enforcement officers should have the capacity to control borders, developmental and other considerations must also play a role alongside law enforcement responses to smuggling of migrants. Combating the root causes of irregular movement, such as poverty and discrimination, and the creation of job opportunities are also means for addressing the smuggling of migrants by acting to reduce the vulnerability of certain people to falling into the hands of smugglers and by giving people incentives to remain in their countries of origin. Opportunities for regular migration may also reduce the demand for smuggling.

A lack of effective cooperation may lead to an increase in the number of migrants seeking the services of smugglers (see Tool 1, section 2 on root causes of migration), or simply result in displaced migratory and smuggling routes if cooperation is limited to strengthening border controls. But where cooperation is successful, it can result in the dismantling of smuggling networks that prey on vulnerable people in search of a better life, and it can save lives.

Smugglers of migrants have achieved successful cooperation across geographical, cultural and ethnic boundaries. In order to stop them, international actors against migrant smuggling must do the same.

Recommended resources

United Nations. *Report of the Secretary-General on international migration and development.* 18 May 2006. A/60/871.

Paragraph 71 of the report of the Secretary-General on international migration and development states:

> Member States now share a core set of migration-related goals that include: enhancing the development impact of international migration; ensuring that migration occurs mainly through legal channels; ensuring the protection of the

rights of migrants; preventing the exploitation of migrants, especially those in vulnerable situations; and combating the crimes of smuggling of migrants and trafficking in persons. Governments should recommit to these goals and develop a strategy based on co-development to reach them.

International Organization for Migration. *Interstate Cooperation and Migration: Berne Initiative Studies.* 2005.

Four of the five papers in this volume examine current forms of inter-State cooperation in the migration field at the regional level and the fifth paper discusses trends in inter-State cooperation at the global level. Taking as their point of departure the rapid growth in informal non-binding regional consultative processes on migration, the papers analyse their modes of operation, review their outcomes and provide an assessment of their effectiveness in facilitating inter-State cooperation at the regional and global level. The papers also suggest ways in which inter-State cooperation at the regional and global levels might be enhanced in the future.

http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=161

6.2 Types of international cooperation

International cooperation in criminal matters is an essential prerequisite to combating smuggling of migrants. Smuggling of migrants is a transnational crime that may involve actors from several jurisdictions. A given set of facts may justify and give rise to criminal investigations and prosecutions in multiple jurisdictions. Informal and formal methods of international cooperation are important in order to prevent smugglers from having safe havens.

The forms of international cooperation include:

- Extradition
- Mutual legal assistance
- Transfer of criminal proceedings
- Transfer of sentenced persons
- Cooperation for purposes of confiscation to deprive traffickers of criminal assets
- Cooperation between law enforcement authorities including exchanging information and cooperation in conducting inquiries
- Joint investigations
- Cooperation in using special investigative techniques

Channels of communication of international cooperation include:

- Competent national authorities or central authorities
- Diplomatic staff
- Law enforcement officials

The type of cooperation needed, the legal requirements of the requested State and the provisions of the relevant agreement will determine who is contacted. Also, the forms of cooperation mentioned above could be combined with a view to ensuring the most comprehensive assistance with investigations, prosecutions and judicial proceedings related to smuggling of migrants.

Examples of more structured forms of cooperation in law enforcement include:

- Posting liaison officers to facilitate cooperation with the host Government's law enforcement officers in criminal investigations.
- Bilateral and multilateral agreements and arrangements on law enforcement cooperation and on the sharing of law enforcement information.

- Cooperation within such structures as the International Criminal Police Organization (INTERPOL), or various regional cooperation structures.[1]
- Judicial cooperation in criminal matters provides a more formal framework for cooperation compared with the cooperation in law enforcement. The tools available are based on bilateral and multilateral agreements and arrangements or, in some cases and in the absence of such agreements and arrangements, directly on national law.

Both informal and formal law enforcement cooperation, however, have been hampered by a number of problems, such as:

- Diversity of legal systems
- Diversity of law enforcement structures
- Absence of channels of communication for the exchange, for example, of basic information and criminal intelligence
- Diversity in approaches and priorities
- Cultural and linguistic challenges
- Lack of trust

The United Nations Convention against Transnational Organized Crime[2] contains detailed provisions on both formal and informal cooperation in criminal matters, which are also applicable, mutatis mutandis, to the Smuggling of Migrants Protocol, as follows:

- Extradition (art. 16)
- Transfer of sentenced persons (art. 17)
- Mutual legal assistance (art. 18)
- Joint investigations (art. 19)
- Cooperation in using special investigative techniques (art. 20)
- Transfer of criminal proceedings (art. 21)
- International cooperation for purposes of confiscation (art. 13)
- Law enforcement cooperation (art. 27)

In general terms, States parties can use the Organized Crime Convention as a legal basis for international cooperation. In the area of extradition, States parties that make extradition conditional on the existence of a treaty are required to inform the Secretary-General whether they will consider the Convention as the legal basis for this form of cooperation. States may also use national legislation and/or the principle of reciprocity to execute extradition requests.

In the area of mutual legal assistance, article 18 includes a set of provisions that can be used by countries not bound by relevant bilateral treaties or by States that have already concluded such treaties and may wish to complement them.

[1] Consider for example, the European Police Office, the European Union Judicial Cooperation Unit, the West African Police Chiefs Committee, the Central African Police Chiefs Committee, the Southern African Regional Police Chiefs Co-operation Organization, the East African Police Chiefs Cooperation Organization, the Association of Southeast Asian Nations Chiefs of Police, the Commission of Police Chiefs of Central America, the Caribbean and Mexico, the South Pacific Chiefs of Police Conference and the Association of Caribbean Commissioners of Police.

[2] United Nations, *Treaty Series*, vol. 2225, No. 39574.

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

Module 8 of this *Training Manual* for law enforcers and prosecutors specifically addresses the investigator's role in international cooperation in responding to migrant smuggling.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Anti-Human Trafficking Manual for Criminal Justice Practitioners*. New York, 2009.

Module 6 of this *Manual* recalls the different forms and principles of international cooperation, discusses types of international cooperation beyond traditional forms of extradition and mutual legal assistance as defined by the Organized Crime Convention, and discusses the impact of different legal systems on international cooperation among States. The module further offers insight into the process of making formal requests for mutual legal assistance, the contents of the request letter and considerations when making requests.

www.unodc.org/documents/human-trafficking/09-80667_module6_Ebook.pdf.

6.3 The legal basis for formal cooperation

Formal cooperation in addressing the smuggling of migrants can be based on treaties (sometimes also called conventions or covenants). Treaties can be bilateral or multilateral or regional, such as those of the Council of Europe or the European Union.

- Bilateral: agreements between two countries on particular issues such as extradition and mutual legal assistance.
- Multilateral: agreements between several countries on particular issues. For instance, there are agreements on particular issues among the members of the European Union, African Union, Council of Europe, Council of the Baltic Sea States and the Association of Southeast Asian Nations.
- International: international agreements that provide a broad basis for extradition or mutual legal assistance, especially in the absence of bilateral or regional treaties.

International crime conventions

As States do not have treaties with all other States, the Organized Crime Convention is a significant instrument. There are 151 States parties to the Convention.

- The Organized Crime Convention is an example of a Convention on which international cooperation can be based.
- The Organized Crime Convention contains a very comprehensive regime for international cooperation:
  - Extradition (art. 16).
  - Mutual legal assistance (art. 18).
  - Transfer of sentenced persons (art. 17).
  - Transfer of criminal proceedings (art. 21).
  - International cooperation for purposes of confiscation (art. 13).
  - Joint investigations (art. 19).
  - Cooperation in using special investigative techniques (art. 20).
- Article 27 of the Convention establishes the measures that States parties should adopt for law enforcement cooperation:
  - Strengthening channels of communication among law enforcement authorities (para. 1 *(a)*).
  - Cooperating with other States parties in conducting inquiries concerning persons and the movement of proceeds and instruments of crime (para. 1 *(b)*).

  - Providing items or substances for analytical or investigative purposes (para. 1 *(c)*).
  - Promoting exchanges of personnel, including the posting of liaison officers (para. 1 *(d)*).
  - Exchanging information on specific means and methods used by organized criminal groups (para. 1 *(e)*).
  - Exchanging information and coordinating administrative and other measures for the purposes of facilitating early identification of offences (para. 1 *(f)*).
  - Considering entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies. Where no such agreement or arrangement is in place, the Convention may provide the basis for mutual law enforcement cooperation (para. 2).
- All of these provisions apply to the Protocols once ratified.

Domestic law of the requested State

Some countries allow extradition on particular legal grounds:

- Cooperation may be entered into on the basis of reciprocity
- Cooperation may be provided for on a case-by-case basis according to domestic legislation

Where the Organized Crime Convention has not been signed or there is no other legal basis for international cooperation, the principles of reciprocity and courtesy may provide the basis for cooperation.

Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations model legislation and manuals

Model laws are developed to meet the needs of each of the world's major legal traditions: common law, civil law and Islamic law. The model laws and manuals that will assist in strengthening international cooperation are:

- Model Law on Mutual Assistance in Criminal Matters (2007) (for both civil and common law systems)
- Model Treaty on Extradition (General Assembly resolution 45/116, annex, as amended by General Assembly resolution 52/88, annex)
- Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex I, as amended by General Assembly resolution 53/112, annex I)

- Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters

These tools are available from:

www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html

United Nations Office on Drugs and Crime. *Competent National Authorities Online Directory*.

The database provides contact information for the competent authorities of more than 150 States or dependent territories that had been provided to the United Nations Office on Drugs and Crime (UNODC), including information on specific procedures to be followed in urgent cases. The Directory currently contains the contact information of over 600 competent national authorities, organized into thematic categories:

- Extradition: authorities designated to receive, respond to and process extradition requests under article 6 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988* and article 16 of the Organized Crime Convention; as well as transfer of sentenced persons under article 17 of the Organized Crime Convention.
- Mutual legal assistance: authorities designated to receive, respond to and process mutual legal assistance requests under article 7 of the 1988 Convention and article 18 of the Organized Crime Convention.
- Illegal traffic of narcotics by sea: authorities designated to receive, respond to and process requests for cooperation to suppress illicit traffic by sea under article 17 of the 1988 Convention.
- Smuggling of migrants by sea: authorities designated to receive, respond to and process requests for cooperation to suppress smuggling of migrants by sea under article 8 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

www.unodc.org/compauth/en/index.html

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this *Training Manual* address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The *Legislative Guides*—formulated to accommodate different legal traditions—set out the basic requirements of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as the issues that each State party must address in implementing them.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.06.V.5).

The publication of the *Travaux Préparatoires* (official records) of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto is intended to provide a better, in-depth understanding of the Convention and its Protocols. The publication tracks the progress of negotiations in the open-ended intergovernmental Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, established by the General Assembly by its resolution 53/111 of 9 December 1998 with terms of reference supplemented by the Assembly in its resolution 53/114 of 9 December 1998, and requested to finalize the draft texts and submit them directly to the General Assembly for adoption (resolution 54/126).

www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html

Association of Southeast Asian Nations. *Trafficking in Persons: Handbook on International Cooperation*. Australian Government and United Nations Office on Drugs and Crime, 2009.

The purpose of this *Handbook* is to provide an introduction to the key tools of international cooperation, specifically mutual (legal) assistance and extradition and to provide guidance on how to use these tools. Though the *Handbook* is aimed primarily at criminal justice actors in the region of the Association of Southeast Asian Nations who are working to combat trafficking in persons, it also addresses issues that are relevant to all countries engaged in this work, and offers guidance which is applicable to smuggling of migrants.

www.artipproject.org/ic-workshop/Extract_TIP%20Handbook%20on%20International%20Cooperation_Feb09Draft.pdf

*United Nations, *Treaty Series*, vol. 1582, No. 27627.

6.4 Challenges of international cooperation

There are several challenges to international cooperation on combating the smuggling of migrants and in other criminal investigations. Both formal and informal law enforcement cooperation have been hampered by such issues as:

- Lack of trust
- Diversity of legal systems
- Diversity of law enforcement structures
- Absence of channels of communication
- Diversity in approaches and priorities
- Linguistic and cultural challenges

The most important component of international cooperation is the role played by individuals. All the laws and policies that allow for international cooperation count for little if individuals do not cooperate proactively and appropriately.

There is sometimes reluctance to share information, often in relation to security concerns. When seeking cooperation, an investigator must be mindful of these concerns. Having suitable methods in place to protect the security of information may encourage a better flow of information.

International cooperation in criminal matters can be challenging and requires knowledge, planning and awareness of the practical issues at stake in both the requested and the requesting States. Some of these issues include, but are not limited to, the cost of investigations, the location of the trial, the applicable legal framework, nationality, the location of witnesses, the location of offenders, gathering of evidence and admissibility of evidence rules. However, with a little experience, the benefits of using the tools of international cooperation will greatly outweigh these challenges.

Challenges of formal cooperation

The main advantage of effective formal cooperation is its potential for generating evidence that is admissible in court.

However, varying laws and legal systems present a significant challenge for formal cooperation. Often bureaucratic requirements are demanding and results are sometimes not timely.

If a person's safety is at risk, it is unlikely that a formal letter of request will be appropriate because it may take a considerable amount of time to achieve a result.

Challenges of informal cooperation

Informal cooperation (direct officer-to-officer contact) is often quicker than formal cooperation. This can have many benefits with respect to smuggling of migrants operations as it can result in prompt responses to situations that carry risks to people.

However, there are some risks and challenges involved in this form of cooperation, such as:

- Exposing colleagues in other countries to risks in connection with cooperation
- Diplomatic incidents because action is not properly considered
- Exposure of people to increased risks through unwitting or deliberate leakage of information from the agency involved
- Increased risk of compromising other operations and law enforcement staff

These types of risks can be minimized by:

- Not making individual officer-to-officer contact if this is specifically forbidden by one of the jurisdictions concerned.
- Finding out what the arrangements for cooperation between the countries concerned are. Where liaison officers or units exist, their advice should be sought.
- Not passing on information that may expose someone to danger without establishing the risks of contacting a particular unit or individual.
- Keeping liaison units informed of the activities in progress.

It may be difficult to assess the level and impact of the risk at a distance. Where possible, liaison departments and officers should be asked to provide information about who can be safely contacted.

Best practice in international cooperation: communication

- International cooperation is greatly facilitated by communication between counterparts.
- Informal, direct and spontaneous contact should be established and maintained (for example, via e-mail, telephone, tele- or video-conferences). In general, there should be as much communication as possible among counterparts.
- Procedures should be simplified and expedited.

Recommended resources

Police organizations

International and regional police organizations can assist in the facilitation of cooperation. Consider for example the International Criminal Police Organization, the European Police Office, the West African Police Chiefs Committee, the Central African Police Chiefs Committee, the Southern African Regional Police Chiefs Cooperation

Organization, the East African Police Chiefs Cooperation Organization, the Association of Southeast Asian Nations Chiefs of Police, the Commission of Police Chiefs of Central America, Mexico and the Caribbean, the South Pacific Chiefs of Police Conference and the Association of Caribbean Commissioners of Police.

United Nations Office on Drugs and Crime. *Competent National Authorities Online Directory.*

The database provides contact information for the competent authorities of more than 150 States or dependent territories that had been provided to UNODC, including information on specific procedures to be followed in urgent cases. The Directory currently contains the contact information of over 600 competent national authorities, organized into thematic categories: extradition, mutual legal assistance, illicit traffic by sea and smuggling of migrants by sea.

www.unodc.org/compauth/en/index.html

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this *Training Manual* address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

6.5 Extradition

Extradition—a formal means of cooperation—is provided for in article 16 of the Organized Crime Convention.

Extradition is the surrender by one State of a person present on its territory to another State that seeks this person either for the purpose of prosecution, or for the purpose of enforcing a sentence.

For a long time, extradition was largely a matter of reciprocity or comity. Even now, in the absence of a binding treaty, there is no international obligation to extradite. However, there is a growing trend towards recognizing the duty to extradite or prosecute, in particular in relation to certain international crimes, including smuggling of migrants.

Some of the most important concerns in relation to extradition are discussed below.

Existence of a legal basis for extradition

In general, some States require a treaty to extradite and some do not. In States that do require a treaty, bilateral and multilateral treaties can provide the basis for extradition. Multilateral treaties like the Organized Crime Convention are very efficient with regard to extradition as they provide an obligatory basis for extradition, valid for all States parties.

Requirements for the application of article 16 on extradition

Article 16 of the Organized Crime Convention applies when an offence covered by the Convention involves an organized criminal group and the person sought for extradition is "located in the territory of the requested State Party". There is no need to prove that the offence was transnational in nature for the purposes of extradition in cases involving the smuggling of migrants.

Dual criminality

The requesting State must prove that the criminal offence involving the person who is the subject of the request for extradition is punishable under the domestic law of both the requested and requesting States. This rule has come to be applied less strictly as a result of attempts to list acts that are offences under the Convention and therefore punishable in the jurisdictions of all States parties.

Specificity

This principle obligates States to specify the offences for which the extradition request is being sent and obligates the requesting State to prosecute only those offences.

With particular regard to the offence of smuggling of migrants, it is essential to achieve convergence in national laws in terms of defining the relevant criminal conduct in accordance with the definition contained in the Smuggling of Migrants Protocol (see Tool 1, section 8) and especially in terms of ensuring that such conduct is an extraditable offence.

Double jeopardy

A State may deny a request for extradition when the person sought has already been tried for the offence contained in the request.

Non-extradition of nationals

The reluctance of States to extradite their own nationals appears to be lessening in many cases. The Organized Crime Convention includes a provision that reflects this development: article 16 (11) refers to the possibility of temporary surrender of the person on condition that he or she will be returned to the requested State party for the purpose of serving the sentence imposed. In cases where the requested State refuses to extradite a person on the grounds that the person is its own national, the State is often seen, under binding international legal instruments, to have an obligation to bring the person to trial.

This is an illustration of the principle of *aut dedere aut judicare* (extradite or prosecute) and requires the establishment of appropriate jurisdictional basis (see below). Where extradition is requested for the purpose of enforcing a sentence, the requested State may also enforce the sentence that has been imposed in accordance with the requirements of its domestic law.

The differences between the prosecutorial practices under common law and continental law systems can make effective interregional and international cooperation difficult. In the field of extradition, such differences are even more acute in relation to the documents to be presented to the requested State and the evidentiary requirements for granting an extradition request, especially in complex cases involving the smuggling of migrants. Advance research on requirements as well as close coordination with foreign counterparts can make a significant contribution to simplifying extradition procedures.

Recommended resources

UNODC provides several tools to facilitate the process of seeking and executing extradition requests.

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations Office on Drugs and Crime. *Model Law on Extradition*.

UNODC elaborated a Model Law on Extradition to assist interested States in drafting or amending domestic legislation in this field.

The Model Law on Extradition is available from:

www.unodc.org/pdf/model_law_extradition.pdf.

United Nations Office on Drugs and Crime. *Model Treaty on Extradition*.

The Model Treaty on Extradition (General Assembly resolution 45/116, annex, subsequently amended in resolution 52/88, annex) was developed as a useful framework that could be of assistance to States interested in negotiating and concluding bilateral agreements aimed at improving cooperation in matters of crime prevention and criminal justice.

The Model Treaty on Extradition and the Revised Manuals on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters are available from:

www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html

United Nations Office on Drugs and Crime. *Competent National Authorities Online Directory.*

The database provides contact information for the competent authorities of more than 150 States or dependent territories that had been provided to UNODC, including information on specific procedures to be followed in urgent cases. The Directory currently contains the contact information of over 600 competent national authorities, organized into thematic categories: extradition, mutual legal assistance, illicit traffic by sea and smuggling of migrants by sea.

www.unodc.org/compauth/en/index.html

United Nations Office on Drugs and Crime. *Anti-Human Trafficking Manual for Criminal Justice Practitioners.* New York, 2009.

The purpose of this *Manual* is to support criminal justice practitioners in the prevention of human trafficking. Many of the principles are applicable to combating the smuggling of migrants. Module 6 recalls the different forms and principles of international cooperation, discusses types of international cooperation beyond the traditional forms of extradition and mutual legal assistance as defined by the Organized Crime Convention, and discusses the impact of different legal systems on international cooperation amongst States.

www.unodc.org/documents/human-trafficking/09-80667_module6_Ebook.pdf

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this *Training Manual* address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert

investigative techniques, intelligence, legislative issues, international cooperation and human rights.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The Legislative Guides—formulated to accommodate different legal traditions—set out the basic requirements of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as the issues that each State party must address in implementing them.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

Report of the Informal Expert Working Group on Effective Extradition Casework Practice

The informal expert working group on effective extradition casework practice of the UNODC Legal Advisory Programme met in Vienna in 2004 to discuss the most common impediments in major legal traditions to efficient and effective extradition. The product was a report containing a comprehensive package of recommendations pertaining to:

- Extradition infrastructure: legislation, treaties, institutional structures and so forth
- Day-to-day casework practice: planning, preparation, conduct of proceedings, communication systems, language problems and so forth

Also of particular use is annex C to the report, which provides a checklist for the content of extradition requests, required supporting documents and information. A checklist for extradition requests is contained in Tool 6, section 6.

The report is available from:

www.unodc.org/pdf/ewg_report_extraditions_2004.pdf.

United Nations. Congress on Crime Prevention and Criminal Justice. *Workshop 1: Enhancing International Law Enforcement Cooperation, including Extradition Measures—Background Paper.* A/CONF.203/9.

The present paper describes key trends, practices and recent developments in both law enforcement cooperation and international cooperation in criminal matters, including extradition and mutual legal assistance. It outlines the evolution of both informal and formal international cooperation, identifying challenges and problems to be addressed in each relevant field.

Association of Southeast Asian Nations. *Trafficking in Persons: Handbook on International Cooperation.* Australian Government and United Nations Office on Drugs and Crime, 2009.

The purpose of this *Handbook* is to provide an introduction to the key tools of international cooperation, specifically mutual (legal) assistance and extradition and to provide guidance on how to use these tools. Though the *Handbook* is aimed primarily at criminal justice actors in the region of the Association of Southeast Asian Nations who are working to combat trafficking in persons, it also addresses issues that are relevant to all countries engaged in this work, and offers guidance which is applicable to smuggling of migrants.

www.artipproject.org/ic-workshop/Extract_TIP%20Handbook%20on%20International%20Cooperation_Feb09Draft.pdf

Promising practices

African instrument

The Economic Community of West African States (ECOWAS) Convention on Extradition

Signed in Abuja in August 1994, the ECOWAS Convention on Extradition understands extradition to mean the surrender of all persons within the territory of the requested State:

- Who are wanted for prosecution for an offence or
- Who are wanted by the legal authorities of the requesting State for the carrying out of a sentence

www.iss.co.za/AF/RegOrg/unity_to_union/pdfs/ecowas/4ConExtradition.pdf

Arab instrument

Extradition Agreement of the League of Arab States (1952)

This instrument was approved by the Council of the League of Arab States in 1952, but was signed by only a limited number of States and ratified by fewer. The Convention is a stand-alone basis for extradition, but contemplates the existence of bilateral arrangements between States parties.

Commonwealth instrument

Scheme relating to the rendition of fugitive offenders within the Commonwealth

This Commonwealth Scheme was conceived at a meeting of law ministers in London in 1966 to provide for reciprocal agreements among Commonwealth member States.

www.thecommonwealth.org/Internal/38061/documents/

European instruments

European Convention on Extradition (United Nations, Treaty Series, vol. 359, No. 5146).

http://conventions.coe.int/Treaty/EN/Treaties/Html/024.htm

Additional Protocol to the European Convention on Extradition (Council of Europe, European Treaty Series, No. 86).

http://conventions.coe.int/Treaty/en/Treaties/Html/086.htm

Second Additional Protocol to the European Convention on Extradition (Council of Europe, *European Treaty Series*, No. 98).

http://conventions.coe.int/Treaty/en/Treaties/Html/098.htm

Convention on Simplified Extradition Procedure between the Member States of the European Union (1995) (Official Journal of the European Communities, C 078, 30 March 1995).

This European Union Convention supplements the European Convention on Extradition of the Council of Europe and simplifies the extradition procedure between member States without affecting the application of the most favourable provisions of bilateral or multilateral agreements.

http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l14015a_en.htm

Council framework decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

This framework decision simplifies and speeds up the extradition procedure, by replacing the political and administrative phase of the process with a judicial mechanism. The framework decision replaced the Convention relating to Extradition between Member States of the European Union as of July 2004. The procedure for the surrender of fugitives within the European Union, established by the 2002 Council Framework Decision on the European arrest warrant, is intended to streamline and accelerate the relevant proceedings among the member States, by, inter alia, abolishing the double criminality requirement for a list of offences, including smuggling of migrants.

http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33167_en.htm

Benelux Convention on Extradition and Judicial Assistance in Penal Matters (1962)

The Benelux Convention was adopted by Belgium, Luxembourg and the Netherlands in June 1962. This Convention reflects many aspects of the European Convention provisions, but many of its substantive articles are specific to the close relations between the signatories.

Nordic States Scheme (1962)

Adopted by Denmark, Finland, Iceland, Norway and Sweden, this extradition treaty reflects the strong connections between those States.

European arrest warrant

In the European Union, Member States have agreed to honour each other's arrest warrants, implementing the European arrest warrant which was designed to replace traditional extradition proceedings between States. Other recent trends in extradition law have focused on making it easier for States to fulfil the dual criminality requirement. This has been done by inserting general provisions into treaties that list acts and require only that they be punished as crimes or offences by the laws of both States. Some States have simplified the requirement even further by introducing a conduct-based test that allows extradition for any conduct criminalized and subject to a certain level of punishment in each State. Regional harmonization of national legislations with the criminalization provisions in the Organized Crime Convention and the Trafficking in Persons Protocol can greatly aid extradition procedures. For more information, visit:

http://ec.europa.eu/justice_home/fsj/criminal/extradition/fsj_criminal_extradition_en.htm

Inter-American instruments

Inter-American Convention on Extradition. (United Nations, *Treaty Series*, vol. 1752, No. 30579).

The Inter-American Convention on Extradition, which entered into force in 1992, was the result of a long history of inter-American extradition conventions dating back to 1879. The Convention is open to accession by any American State, and to permanent observers to the Organization of American States following approval by the General Assembly of the Organization of American States.

www.oas.org/juridico/English/treaties/b-47.html

6.6 Request for extradition: checklist

Checklist

The following information should always be included in extradition requests:

- Identity of the person sought
  - A description of the person sought and other information that may be relevant to establishing his or her identity, nationality and location
- Facts and procedural history of the case
  - An overview of the facts and procedural history of the case, including the applicable law of the requesting State and the criminal charge against the person sought
- Legal provisions
  - A description of the offence and applicable penalty, with an excerpt or copy of relevant parts of the law of the requesting State
- Statute of limitations
  - Any relevant limitation period beyond which prosecution of a person cannot be lawfully brought or pursued
- Legal basis
  - A description of the basis upon which the request is made, such as national legislation, the relevant extradition treaty or arrangements or, in the absence thereof, by virtue of comity

If the person sought is accused, but not yet convicted, of an offence, the following should be submitted:

- Warrant for arrest
  - The original or certified copy of a warrant issued by a competent judicial authority for the arrest of that person, or other documents having the same effect.
- Statement of the offence or offences
  - A statement of the offence or offences for which extradition is requested and a description of the acts or omissions constituting the alleged offence or offences, including an indication of the time and place of commission. The maximum sentence for each offence, the degree of participation in the offence by the person sought and all relevant limitation periods should also be stated.
- Evidence
  - Evidence of identity is always required. The requesting State must establish whether sworn evidence is required. If so, it must also be established whether the witness must depose that he or she both knows the person sought and knows that the

person engaged in the relevant acts or omissions constituting the relevant offence or offences. Suspicion of guilt for every offence for which extradition is sought must be substantiated by evidence. The requesting State must establish in advance whether this must take the form of sworn or unsworn evidence of witnesses, or whether a sworn or unsworn statement of the case will suffice. If a statement of the case will suffice, it is necessary to establish whether it has to contain particulars of every offence. Where sworn evidence is required, it must be established whether this has to show prima facie evidence of every offence for which extradition is sought. If so, the requesting State must clarify what is required and admissible to establish that, or any lesser test. Everything must be submitted in the form required.

- If the person sought is convicted of an offence, the following must be submitted:
  - An original or a certified or authenticated copy of the original conviction or detention order, or other documents having the same effect, to establish that the sentence is immediately enforceable. The request should also include a statement establishing to what extent the sentence has already been carried out.
  - A statement indicating that the person was summoned in person or otherwise informed of the date and place of hearing leading to the decision or was legally represented throughout the proceedings against him or her, or specifying the legal means available to him or her to prepare his or her defence or to have the case retried in his or her presence.
  - A document setting out the conviction and a statement affirming that there is an intention to impose a sentence.

Signature of documents, assembly of request and attachments

- Warrants for arrest and conviction or detention order:
  - It must be established in each case whether the warrant or order must be signed by a judge, magistrate or other judicial officer, or officer of State.
  - It must also be established whether the officer of State must also sign each separate document.
- Assembly of request
  - The requesting State must establish whether all the documents included in the request and attachment must be bundled together, and what, if any, seals are required to prevent later arguments that documents have been added or removed.
- Transmission of the request
  - The requesting State should ensure that the request and attachments are transmitted by the channel agreed with the requested State (not necessarily the diplomatic channel). The transmission and delivery should be monitored to ensure crucial time limits are met.

Optional additional content and documents

- Identification of authority
  - Identification of the office or authority requesting the provisional arrest or extradition.

- Prior communication
  - Details of any prior contact between officers in the requesting and requested States.
- Presence of officials
  - An indication as to whether the requesting State wishes its officials or other specified persons to be present at or participate in the execution of the extradition request and the reason why this is requested.
- Indication of urgency and/or time limit
  - An indication of any particular urgency or applicable time limit within which compliance with the request is required and the reason for the urgency or time limit.
- Use of other channels
  - Where a copy of the request has been or is being sent through other channels, this should be made clear in the request.
- Language
  - The request and accompanying documents should be made in or accompanied by a certified translation (of all the documents in their entirety) in a language specified by the requested State (or if that State permits more than one, the preferred language indicated after consultation).
- Supplementary documents
  - Supplementary information or documents should be provided as required.

Note: This checklist, put together by the informal expert working group on effective extradition casework, is not intended to be universally exhaustive.

Recommended resource

The full report of the informal expert working group on effective extradition casework practice can be downloaded at:

www.unodc.org/pdf/ewg_report_extraditions_2004.pdf

6.7 Mutual legal assistance

Mutual legal assistance—a type of formal cooperation—is the subject of article 18 of the Organized Crime Convention.

Mutual legal assistance is a mechanism States can use to receive and provide assistance for gathering evidence for investigations and criminal prosecutions. It covers a wide range of assistance. Mutual legal assistance is a vital tool of international criminal justice cooperation in addressing migrant smuggling; through a request for such assistance, one State authorizes another State to take particular measures.

Basis for mutual legal assistance

Mutual legal assistance can be based on bilateral, multilateral or international treaties.

Article 18 of the Organized Crime Convention contains extensive provisions for international cooperation. It sets out types of mutual legal assistance and procedures in detail. If the parties are not bound by a treaty, then the procedures in article 18 of the Organized Crime Convention apply. If there is a treaty, the parties can still agree to apply the procedures in the Organized Crime Convention where it is simpler to do so.

This applies to all offences set out in the Convention and the Smuggling of Migrants Protocol, if ratified, where there are reasonable grounds to suspect that the offence is transnational in nature and involves an organized criminal group.

Under the Organized Crime Convention, States parties are required to afford one another the widest measure of mutual legal assistance.

Types of mutual legal assistance provided for in article 18 of the Organized Crime Convention

- Effecting service of judicial documents
- Providing information and evidentiary items
- Taking evidence or statements from persons
- Executing searches, seizures and freezing
- Providing documents and records
- Facilitating the voluntary appearance of persons in the requesting State party
- Examining objects and sites
- Identifying and tracing proceeds of crime and property for evidentiary purposes

- Temporarily transferring persons in custody
- Providing any other assistance that is not contrary to the domestic law of the requested State party

Making a request for mutual legal assistance

States should designate a central authority competent to receive and execute requests or transmit them to the competent authorities for execution. The role of central authorities is to ensure the speedy execution or transmission of requests, and best practices include:

- Dissemination of up-to-date contact information to other States
- Ensuring that the central authority is available round the clock
- Ensuring that the central authority has the responsibility and power to receive requests made under different treaties
- Quality control and follow-up on requests received or made
- Issuing guidelines for domestic and international use

Executing a request for mutual legal assistance

In executing a request for mutual legal assistance, the requested State party should:

- Ensure the speedy execution of the request
- Respect any deadlines suggested by the requesting State party
- Consult on progress
- Clarify what limitations apply to the use of information or evidence (the best practice in this situation is for the requested State party to impose as few limitations as possible)
- Ensure the confidentiality of requests where the requesting State party requires that the matter is treated confidentially (or inform the requesting State party where confidentiality is not possible)
- Bear the ordinary costs of execution, but consult with the requesting State party where there are substantial extraordinary costs. In such situations, the best practice is for the requesting State party to provide assistance where of the requested State lacks resources

The request must be executed in accordance with the domestic law of the requested State but there is a need to respect the specific procedures described in the request unless those are prohibited or impossible, so as not to pose obstacles to the prosecution.

Refusing a request for mutual legal assistance

Requests for mutual legal assistance can be refused if:

- Requirements are not met.
- The execution of the request would be prejudicial to the essential interests of the requested State.

- The authorities of the requested State party would be prohibited by its domestic law from carrying out the requested action had the offence been under investigation in its own jurisdiction. For instance, the use of certain special investigative techniques is permitted in some jurisdictions but prohibited in others.

Where a request for mutual legal assistance is refused, reasons must be given. There is an obligation to consult with the requesting State party to consider whether a request may be granted subject to terms and conditions.

Pursuant the Organized Crime Convention, States parties may not refuse a request for legal assistance on the sole ground that the offence is also considered to involve fiscal matters. Where dual criminality does not exist, a State may still choose to assist, but it has the right to refuse to render mutual legal assistance.

Best practices in mutual legal assistance legislation

Legislation concerning mutual legal assistance should be modern and flexible, allowing for:

- The use of the Organized Crime Convention as a basis for mutual legal assistance in the absence of a treaty
- A broad range of assistance measures
- Provision of assistance in the absence of dual criminality
- Limited grounds for refusal

The role of central authorities

Requests for assistance are to be made by designated central authorities, which are to have the responsibility and power to receive requests for assistance and to execute them or pass them on to competent national authorities. A country may also have a unit (generally staffed by law enforcement officers) that processes enquiries through informal arrangements such as memorandums of understanding or bilateral agreements. This is likely to be distinct from the central authority that deals only with formal requests as defined by the Organized Crime Convention.

Where it becomes apparent that the request or requests involve substantial costs, the requesting and requested States should consult to determine the terms and conditions under which the request is to be executed and the manner in which the costs are to be borne. The sharing of confiscated assets between States is an important way to encourage cooperation, as provided for in article 14, paragraph 3 (6).

Staff at the central authority should ideally speak various languages, have access to reliable translation services or be able to apply creative solutions to language barriers. For example, staff at the central authority could seek assistance from other government departments and missions abroad or even from the requesting or requested State.

Recommended resources

UNODC offers several tools to facilitate making and executing requests for mutual legal assistance.

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations Office on Drugs and Crime. *Competent National Authorities Online Directory.*

Contact information for competent authorities of more than 150 States or dependent territories has been provided to UNODC, including information on specific procedures to be followed in urgent cases. The online Directory currently contains the contact information of over 600 Competent National Authorities, organized into thematic categories: extradition, mutual legal assistance, illicit traffic of narcotics by sea and smuggling of migrants by sea.

www.unodc.org/compauth/en/index.html

United Nations model legislation and manuals on mutual legal assistance

Model laws are developed to meet the needs of each of the world's major legal traditions: common law, civil law and Islamic law, and accompanied by interpretative commentary. The model laws and manuals that will assist in mutual legal assistance are:

- Model Law on Mutual Assistance in Criminal Matters (2007) (for both civil and common law systems)
- Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex, as amended by General Assembly resolution 53/112, annex I)
- Revised Manuals on the Model Treaties on Extradition and Mutual Assistance in Criminal Matters

These tools are available from: www.unodc.org/unodc/en/legal-tools/model-treaties-and-laws.html

United Nations. *Model Foreign Evidence Bill, 2000.*

In some instances, national legislation must also be reviewed and amended to facilitate international cooperation and the use of foreign evidence in order for there to be full benefit from mutual legal assistance efforts.

The United Nations International Drug Control Programme Model Foreign Evidence Bill, 2000 is a useful tool in this regard. The model bill is available at the UNODC website:

www.unodc.org/pdf/lap_foreign-evidence_2000.pdf

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

Module 8 of the UNODC *Basic Training Manual* addresses international cooperation in addressing migrant smuggling.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Casework Best Practice Guidelines.*

Through expert working groups, UNODC has gathered expert practitioners to identify, capture and make available to other practitioners best international practices, including lessons learned, practical guides and best practice tips.

The reports of these expert working groups on mutual legal assistance are:

- Report of the expert working group on mutual legal assistance and related international confiscation, Vienna, 15-19 February 1993.
- Report of the informal expert working group on mutual legal assistance casework best practice, Vienna, 3-7 December 2001.

These reports are available at www.unodc.org/unodc/en/legal-tools/Model.html

United Nations Congress on Crime Prevention and Criminal Justice, *Workshop 1: Enhancing International Law Enforcement Cooperation, including Extradition Measures—Background Paper.* A/CONF.203/9.

The present paper describes key trends, practices and recent developments in both law enforcement cooperation and international cooperation in criminal matters, including extradition and mutual legal assistance. It outlines the evolution of both informal and formal international cooperation, identifying challenges and problems to be addressed in each relevant field.

International Association of Prosecutors. *Basic Guide to Prosecutors in Obtaining Mutual Legal Assistance in Criminal Matters.*

The International Association of Prosecutors has created a basic guide for use by prosecutors in obtaining mutual legal assistance. The guide is intended to be a simple route map for achieving mutual legal assistance and sets out useful principles and three basic rules to be followed.

- Rule 1. The request should be completed with care. Confidentiality may not always be possible and if it is required, this must be made clear on the front of the document.

- Rule 2. The assistance requested must be permissible under the law of the requesting State and only made if it will result in additional evidence of value to the prosecution. In the context of any request, common rules relating to certainty, confidentiality, disclosure, dual criminality, defamation, human rights, proportionality and reciprocity must be respected.
- Rule 3. Check the contents of your request, ensuring that all necessary particulars are clearly included and that all necessary annexes are attached.

The Basic Guide is available at: www.iap.nl.com

Southern African Development Community. *Protocol on Mutual Legal Assistance in Criminal Matters.*

www.sadc.int/index/browse/page/156#29

Promising practices

Organization of American States.

Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition.

At the Third Meeting of Ministers of Justice and Attorneys General of the Americas, held in 2000, it was decided to improve information exchanges between Member States of the Organization of American States in the area of mutual legal assistance in criminal matters. A working group was established and developed a pilot project focusing on the creation of a criminal justice information exchange network. One component of the resulting Information Exchange Network is a public website that enables citizens of Member States of the Organization to become familiar with their own justice systems and those of the States they are working with. The site includes a general description of legal systems of countries of the Americas and posts laws and bilateral and multilateral agreements in force concerning extradition and mutual legal assistance in criminal matters. This information is available in the four official languages of the Organization: English, French, Spanish and Portuguese.

For more information about the Information Exchange Network, visit:

www.oas.org/juridico/mla/en/index.html

European liaison magistrates

In the European Union, a framework has been created for the exchange of liaison magistrates to improve judicial cooperation between Member States. The tasks of the liaison magistrates comprise any activity designed to encourage and accelerate all forms of judicial cooperation in criminal matters, in particular by establishing direct links between relevant departments and judicial authorities in order to facilitate mutual legal assistance. Under arrangements agreed between the home and the host Member States, the tasks of liaison magistrates may also include any activity connected with handling the exchange of information and statistics designed to promote mutual understanding of the legal systems of the States concerned and to further relations between the legal professions in each of those States.

Mutual legal assistance instruments

African instruments

Cooperation agreement on police matters between Benin, Ghana, Nigeria and Togo (Lagos, 1984)

The Economic Community of West African States Convention on Mutual Assistance in Criminal Matters (1992)

The Economic Community of West African States (ECOWAS) Convention on Mutual Assistance in Criminal Matters was signed in July 1992 and entered into force on 28 October 2003. The scope of the application of mutual legal assistance as defined by article 2 of the Convention includes:

- Taking evidence or statements
- Assisting in assuring the availability of detained persons or others to give evidence or assist in investigations
- Effecting service of judicial documents
- Executing searches and seizures
- Forfeitures and confiscations of the proceeds of crime
- Examining objects and sites
- Providing information and evidentiary items
- Providing originals or certified copies of relevant documents and records

Southern African Development Community Protocol on Mutual Legal Assistance in Criminal Matters (2002)

www.sadc.int/index/browse/page/156#29

Mutual Assistance Pact between Member States of the Economic Community of Central African States (2002)

Association of Southeast Asian Nations instrument

Association of Southeast Asian Nations Treaty on Mutual Legal Assistance in Criminal Matters (2004)

In Kuala Lumpur on 29 November 2004, the Governments of Brunei Darussalam, Cambodia, Indonesia, the Lao People's Democratic Republic, Malaysia, the Philippines, Singapore and Viet Nam signed the Treaty on Mutual Legal Assistance in Criminal Matters.

www.aseansec.org/17363.pdf

Australian instrument

Through the Mutual Assistance (Transnational Organised Crime) Regulations 2004 and the Mutual Assistance in Criminal Matters Act 1987, mutual legal assistance is potentially available to all States parties to the Organized Crime Convention.

For more information, visit:

www.ministerjusticeandcustoms.gov.au/www/agd/agd.nsf/page/Extradition_and_mutual_assistance

Commonwealth instrument

Scheme (the Harare Scheme) relating to Mutual Assistance in Criminal Matters within the Commonwealth (1986, as amended in 1990 and 1999)

The Commonwealth scheme (the Harare Scheme) was agreed in 1990 and amended in 2002 and 2005. It is not a treaty or convention, but it assists States in making requests for assistance. Paragraph 14 of the scheme sets out the contents required in such a request.

www.thecommonwealth.org/Internal/38061/documents/

European instruments

European Convention on the Transfer of Proceedings in Criminal Matters

Strasbourg, 1972; came into force in 1978, (United Nations, *Treaty Series*, vol. 1137, No.17825).

http://conventions.coe.int/treaty/en/Treaties/Html/073.htm

Act on mutual assistance in criminal matters between European Union Member States (2000)

Given that legal and judicial systems differ from one European Union Member State to another, this Act sought to establish a cooperative mechanism to facilitate mutual judicial assistance between authorities (police, customs and courts) to improve the speed and efficiency of cooperation.

http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33108_en.htm

European Convention on Mutual Assistance in Criminal Matters (United Nations, Treaty Series, vol. 472, No. 6841 [Council of Europe, European Treaty Series, No. 30])

http://conventions.coe.int/Treaty/en/Treaties/Html/030.htm

Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

(United Nations, *Treaty Series*, vol. 1496, No. 6841 [Council of Europe, European Treaty Series, No. 99])

http://conventions.coe.int/Treaty/en/Treaties/Html/099.htm

Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

(Council of Europe, European Treaty Series, No. 182)

http://conventions.coe.int/Treaty/en/Treaties/Html/182.htm

Convention on Mutual Assistance and Cooperation between Customs Administrations (1998)

This Convention, drawn up on the basis of article K3 of the Treaty on European Union, seeks to increase cooperation among customs officials. It is not intended to affect other provisions regarding mutual assistance in criminal matters between judicial authorities, or more favourable provisions in bilateral or multilateral agreements between European Union Member States governing customs cooperation.

http://europa.eu/legislation_summaries/customs/l33051_en.htm

Nordic States Scheme (1962)

Adopted by Denmark, Finland, Iceland, Norway and Sweden, this scheme reflects the strong connections between those States.

Agreement among the Governments of the Black Sea Economic Cooperation Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms (1998) and its Additional Protocol (2002)

Inter-American instruments

Inter-American Convention on Mutual Assistance in Criminal Matters

www.oas.org/juridico/english/Treaties/a-55.html

Optional Protocol related to the Inter-American Convention on Mutual Assistance in Criminal Matters

www.oas.org/juridico/english/treaties/a-59.html

The Inter-American Convention on the Taking of Evidence Abroad

www.oas.org/juridico/english/treaties/b-37.html

Additional Protocol to the Inter-American Convention on the Taking of Evidence Abroad

www.oas.org/juridico/english/treaties/b-51.html

6.8 Request for mutual legal assistance: checklist

The following basic guidelines should be observed when submitting a request for mutual legal assistance:

- There should be a written record of the request
- The request should be in a language acceptable to the requested State
- In urgent cases, the initial request can be made orally, with later confirmation in writing
- To facilitate the process of making a request, the State requested should be consulted

Content of requests

Article 18, paragraph 15 of the Organized Crime Convention3 provides a brief list regarding the content of requests.

Organized Crime Convention, article 18:

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial authority to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

Article 18, paragraph 16, of the Convention states that the requested State party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

[3] The Convention also provides a checklist for confiscation requests in article 13, paragraph 3.

To make the process as efficient as possible and equip the requested State to execute any assistance without delay, the request submitted should be as detailed as possible. In view of this, as well as providing the information listed in article 18, paragraph 15 of the Organized Crime Convention, a request for mutual legal assistance should generally address the following points:

- Identity
  - Identity of the office or authority presenting or transmitting the request and the authority conducting the investigation, prosecution or proceedings in the requesting State, including contact particulars for the office or authority presenting or transmitting the request and, unless inappropriate, the contact particulars of the relevant investigating officer, prosecutor and/or judicial officer.
- Prior contact
  - Details of any prior contact between officers in the requesting and requested States pertaining to the subject matter of the request.
- Use of other channels
  - Where a copy of the request has been or is being sent through other channels, this should be made clear in the request.
- Acknowledgement of the request
  - A cover sheet to be completed, acknowledging the request, and returned to the requesting State.
- Indication of urgency and/or time limit
  - A prominent indication of any particular urgency or time limit for complying with the request and the reason for the urgency or time limit.
- Confidentiality
  - A prominent indication of any need for confidentiality, the reason for this and of the requirement to consult with the requesting State, prior to execution, if confidentiality cannot be maintained.
- Legal basis for the request
  - A description of the basis on which the request is made, (for example, a bilateral treaty, multilateral convention or scheme or, in the absence thereof, on the basis of reciprocity).
- Summary of the relevant facts
  - A summary of the relevant facts of the case including, to the extent possible, full identification details of the alleged offender or offenders.
- Description of the offence and applicable penalty
  - A description of the offence and applicable penalty, with an excerpt or copy of the relevant parts of the law of the requesting State.
- Description of the evidence or assistance requested
  - A description in specific terms of the evidence or other assistance requested.
- Clear link between proceedings and evidence or assistance sought
  - A clear and precise explanation of the connection between the investigation, prosecution or proceedings and the assistance sought (for instance, a description of how the evidence or other assistance sought is relevant to the case).

- Description of the procedures
  - A description of the procedures to be followed by the requested State's authorities in executing the request, to ensure that the request achieves its purpose, including any special procedures to enable any evidence obtained to be admissible in the requesting State, and reasons why the procedures are required.
- Presence of officials from the requesting State at the execution of the request
  - An indication as to whether the requesting State wishes its officials or other specified persons to be present at or participate in the execution of the request and the reason why this is requested.
- Language
  - All requests for assistance should be made in or accompanied by a certified translation into a language specified by the requested State.
  - Where it becomes evident that a request or the aggregate of requests from a particular State involves substantial or extraordinary costs, the requesting and requested States should consult to determine the terms and conditions under which the request is to be executed and the manner in which the costs are to be borne.

Recommended resources

Checklist

The resource containing the above checklist can be downloaded from:

www.unodc.org/pdf/lap_mlaeg_report_final.pdf.

United Nations Office on Drugs and Crime. *Mutual Legal Assistance Request Writer Tool.*

The UNODC Mutual Legal Assistance Request Writer Tool is a user-friendly computer-based tool which is easily adjustable to a State's laws and practices and requires almost no prior knowledge of or experience with mutual legal assistance. Users are guided through the request process using a series of templates and a correct and complete request is automatically generated. The Tool—which does not require Internet access—is available free of charge in Arabic (forthcoming), Bosnian, Croatian, English, French, Montenegrin, Portuguese, Russian, Serbian and Spanish. For more information, visit www.unodc.org/mla/index.html

Checklist for requests from other countries to Australia

Some Governments have created their own checklists to facilitate the process of requesting assistance. One such example is that created by the Australian Attorney-General's Department for States wishing to request such assistance from Australia, available from:

www.ag.gov.au/www/agd/agd.nsf/Page/Extraditionandmutualassistance_Mutualassistance_Mutualassistanceincriminalmatters-checklistforrequestsfromothercountriestoAustralia

6.9 Joint investigation teams

Article 19 Organized Crime Convention

"States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected."

Article 19 of the Organized Crime Convention encourages, but does not require States parties to enter into agreements or arrangements to conduct joint investigations, prosecutions and proceedings, possibly on a case-by-case basis. The domestic laws of most States permit such joint activities and for those few States whose laws do not so permit, this provision will be a sufficient source of legal authority for case-by-case cooperation of this sort.

There are different models of joint investigation, including:

- *Parallel coordinated investigation.* In this type of investigation, also known as a non-co-located investigation, parties operate from their respective jurisdictions.
- *Co-located investigation.* This type of investigation can be active or passive. It consists of an integrated joint investigation with officers from at least two jurisdictions authorized to operate on the ground or in an advisory capacity, under host State control in the territory where the team is operating.

The decision as to what type of joint investigation team is deployed will depend on the laws of the countries involved, the primary needs for having a joint investigation team and the cost and resource implications.

The final decision about which model is most appropriate must be made by States. The following issues will need to be taken into consideration:

- The inevitable sovereignty issues
- The legal framework in place
- The nature of the bilateral or multilateral agreement under which the States are operating
- The convenience for the parties involved

Key points in planning joint investigations include the following:

- The Organized Crime Convention is a flexible legal instrument allowing various approaches for a very wide range of situations and circumstances.
- Large-scale multilateral agreements or investigative teams are not necessary to conduct joint investigations.
- A State with no previous experience of joint investigations might consider conducting such an investigation on a case-by-case basis. This is permitted under the Organized Crime Convention and may provide a basis for a more formal bilateral or multilateral agreement to be concluded in the future.
- The relevant authorities must always be involved in developing agreements or agreeing to joint investigations on a case-by-case basis.
- Planning must be supported at the strategic, tactical and political levels.
- Relevant authorities within the jurisdiction need to be contacted.
- Agreements must be negotiated and documented.
- Bureaucracy should be kept to a minimum.

Practical guidance on establishing joint investigation teams

When the smuggling of migrants is investigated, there is often a need to act quickly. This is because operational information upon which a joint investigation can be based is only of value for a limited time. This practical guidance aims to facilitate the process.

When considering establishing a joint investigation team, a State party should:

- Identify contacts for the purposes of initiating discussions and making decisions on the establishment of joint investigations. A situation could arise where an investigation would need to involve another country but no action could be taken to develop cooperation owing to a lack of infrastructure and identifiable contacts in the other country.
- Preferably aim to establish trust before the start of the joint investigation.
- Establish common goals for the joint investigation at the outset.
- Ensure commitment at all levels to guarantee that assistance will continue to be available when the investigation develops into a prosecution.
- Consider the availability of resources and sharing of resources at the outset as these issues can determine the extent of the cooperation.
- Make a decision on the working language for the joint investigation.

In some joint investigations conducted by States parties, informal collaboration has usually been supplemented with a formal request under an existing agreement at a later stage. In some cases, bilateral agreements have been made after initial cooperation on a particular case. The Organized Crime Convention enables and encourages this type of case-by-case cooperation.

General recommendations for establishing joint investigation teams

- Contacts should be identified for initiating discussions.
- Mutual trust and common goals should be established from the beginning. Commitment should be ensured at all levels.
- Prosecutors, judges and law enforcement officers should receive training on international cooperation issues in order to enhance the level of cooperation.
- Human and capital resources should be identified and shared between parties.
- The working language of the joint investigations should be decided at the beginning.
- Integrated or active joint investigations should be promoted at the national operational level through existing law enforcement and prosecutorial groups, associations and committees.
- Integrated or active joint investigations should be promoted at the regional level through existing regional organizations and networks and/or by developing a network of national contact points for joint investigations.
- Model agreements (bilateral and operational) should be developed and made available or disseminated to prosecutors and law enforcement officials.
- The public should be made aware of the reasons for integrated or active joint investigations and visibility should be ensured through the use of special markings on uniforms and vehicles where appropriate.

Promising practices

Operation Baghdad

A network responsible for recruiting irregular migrants, mainly from Iraq, and transporting them to various EU Member States was uncovered. The migrants had to pay between 2,000 and 20,000 Euros, depending on their means of transportation and the destination country. At the end of 2007, enough intelligence had been gathered to make operation planning possible. Parallel and mirror investigations aiming for a joint action day were planned to dismantle as much of the organized criminal network as possible. This operation was named "Operation Baghdad". Ahead of the Operation Baghdad action day on 23 June 2008, an international coordination centre was set up and hosted by the Central Office for the Repression of Illegal Immigration and Employment of Foreigners without Residence Permits (OCRIEST) in Paris. The coordination centre was manned by staff from OCRIEST, as well as by Europol Liaison Officers from France, Germany, Italy, the Netherlands, Sweden and the United Kingdom, together with bilateral foreign liaison officers from Belgium, Greece, the Netherlands and Spain already stationed in France.

On the common action day itself, Belgium, France, Germany, Greece, Ireland, the Netherlands, Norway, Sweden and the United Kingdom arrested a total of 77 persons and carried out numerous house searches during a period of 24 hours. In total, more than 1,300 EU law enforcement officers were involved, including 6 officers from Europol. Many different items were seized during the house searches, such as mobile phones, notebooks, computers, and address books and directories. Operation Baghdad resulted in 27 arrests in France,

13 in Sweden, 12 in Germany, 11 in Belgium, 7 in the United Kingdom, 3 in the Netherlands, 2 in Greece, 1 in Norway and 1 in Ireland. This joint action on 23 June 2008 shows what transnational law enforcement cooperation can achieve.

Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this *Training Manual* address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

Cooperation mechanisms under the Smuggling of Migrants Protocol

6.10 An overview of international cooperation as provided for in the Smuggling of Migrants Protocol

Cooperation and assistance requirements

- A State party is required:
  - To cooperate to the fullest extent possible to prevent the smuggling of migrants by sea (art. 7)
  - To render assistance to a State party in suppressing the use of a vessel flying its State flag (art. 8, para. 1)
  - To inform the flag State if it has boarded its vessel (art. 8, para. 3)
  - To respond expeditiously to a request to determine whether a vessel is entitled to claim its registry (art. 8, para. 4)
  - To respond expeditiously to a request for authorization to board, search and take other measures with respect to a vessel flying its flag (art. 8, para. 4)
  - To designate an authority to assist or respond to requests for assistance concerning such vessels (art. 8, para. 6)
  - To exchange information with other relevant States regarding the smuggling of migrants, consistent with domestic legal systems (art. 10, para. 1)
  - To comply with any request by the State party that submitted such information that places restrictions on its use (art. 10, para. 2)
  - To provide or strengthen specialized training to combat smuggling of migrants (art. 14, para. 1)
  - To cooperate with other States parties and competent international organizations and non-governmental organizations to ensure adequate training to prevent and eradicate smuggling of migrants (art. 14, para. 2)

Article 1 of the United Nations Convention against Transnational Organized Crime states that the purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively.

The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (the Smuggling of Migrants Protocol) reiterates in article 2 that its purpose is to promote cooperation to prevent and combat the smuggling of migrants, while protecting the rights of smuggled migrants.

Article 7 of the Smuggling of Migrants Protocol specifically concerns cooperation. It states:

> "States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea."

Article 17 of the Smuggling of Migrants Protocol concerns agreements and arrangements. It states:

> "States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:
>
> *(a)* Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
>
> *(b)* Enhancing the provisions of this Protocol among themselves."

Specific areas of cooperation addressed by the Smuggling of Migrants Protocol

The Protocol requires States parties to cooperate in the following areas:

(a) Assistance in relation to maritime cases

In cases where a State party suspects a maritime vessel flying its flag, or a stateless vessel, of involvement in the smuggling of migrants, it may request general assistance from other States parties in suppressing such use of the vessel. Such assistance must be provided, within the means of the requested State party (art. 8, para. 1). Where States parties suspect a vessel registered or flagged to another State party, they may request that other State party to authorize boarding, searching and other appropriate measures. Such requests must be considered and responded to expeditiously (art. 8, paras. 2 and 4). In turn, the State party that searches the vessel must promptly inform the flag State of the results of any measures taken (art. 8, para. 3). Each State party is required to designate an authority or authorities to receive and respond to requests for assistance in maritime cases (art. 8, para. 6).

The main cooperation requirements in relation to maritime cases can be summarized as follows. A State party is required:

- To cooperate to the fullest extent possible to prevent the smuggling of migrants by sea (art. 7)
- To render assistance to a State party that has the right to board a vessel flying its flag (art. 8, para. 1)
- To inform the flag State if it has boarded its vessel (art. 8, para. 3)
- To respond expeditiously to a request from another State party to determine whether a vessel is entitled to claim its registry (art. 8, para. 4)
- To respond expeditiously to a request for authorization to board, search and take other measures with respect to a vessel flying its flag (art. 8, para. 4)
- To designate an authority to assist or respond to requests for assistance concerning such vessels (art. 8, para. 6)

(b) Border measures

Generally, States parties are required to strengthen border controls to the extent possible (art. 11, para. 1) and to consider strengthening cooperation among border control agencies, inter alia, by the establishment of direct channels of communication (art. 11, para. 6).

(c) Travel and identity documents

States parties are required to ensure the integrity and security of their travel documents (art. 12). This may include informing other States parties of measures taken to make documents resistant to tampering and of measures that can be used to verify that the documents are authentic. They are also required, at the request of another State party, to verify within a reasonable time the legitimacy and validity of documents purported to have been issued by them (art. 13).

(d) Training and technical assistance

In addition to training their own officials, States parties are required to cooperate with one another in training to prevent and combat the smuggling of migrants and in appropriate methods for dealing with smuggled migrants. The obligation to cooperate also includes cooperation with intergovernmental and non-governmental organizations, a number of which are active in matters related to migration (art. 14, para. 2).

The Protocol also calls for relevant technical assistance to countries of origin or transit for smuggled migrants (art. 14, para. 3). This compliments the more general requirements contained in articles 29 and 30 of the Organized Crime Convention.

Regarding the main cooperation requirements with respect to training and technical assistance, States parties are required:

- To provide or strengthen specialized training in preventing the smuggling of migrants (art. 14, para. 1).
- To cooperate with each other and competent international organizations and non-governmental organizations to ensure adequate training to prevent, combat and eradicate the smuggling of migrants (art. 14, para. 2).

(e) Prevention

The Protocol requires each State party to promote or strengthen development programmes that combat the root socio-economic causes of the smuggling of migrants (art. 15, para. 3).

(f) Return of smuggled migrants

Generally, a State party is required on request to accept the repatriation of its nationals and to consider accepting those who have or have had the right of permanent residence in its territory. This includes verifying the status of the person as a national or resident without unreasonable delay, re-admitting the person and, where necessary, providing any documents or authorizations needed to allow that person to travel back to the requested State party (art. 18, paras. 1-4).

(g) Information exchange

States parties are required, consistent with existing legal and administrative systems, to exchange information ranging from general research and policy-related material about smuggling and related problems to more specific details of methods used by smugglers (art. 10).

The main cooperation requirements with respect to information exchange can be summarized as follows:

- States parties shall exchange information with other relevant States regarding the smuggling of migrants, consistent with their domestic legal systems (art. 10, para. 1)
- States parties shall comply with restrictions imposed by States parties sending such information (art. 10, para. 2)

(h) Other agreements or arrangements

As with the parent Convention, States parties are encouraged to consider entering into other agreements of a bilateral or regional nature to support forms of cooperation and assistance that may go beyond those required by the Protocol (art. 17).

Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The *Legislative Guides*—formulated to accommodate different legal traditions—set out the basic requirements of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as the issues that each State party must address in implementing them.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.06.V.5).

The publication of the *Travaux Préparatoires* (official records) of the negotiations of the United Nations Convention against Transnational Organized Crime and the Protocols thereto is intended to provide a better, in-depth understanding of the Convention and its Protocols. The publication tracks the progress of negotiations in the open-ended intergovernmental Ad Hoc Committee on the Elaboration of a Convention against

Transnational Organized Crime, established by the General Assembly by its resolution 53/111 of 9 December 1998 with terms of reference supplemented by the Assembly in its resolution 53/114 of 9 December 1998, and requested to finalize the draft texts and submit them directly to the General Assembly for adoption (resolution 54/126).

www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html

6.11 Cooperation and assistance in relation to smuggling of migrants by sea

The Smuggling of Migrants Protocol aims to increase the cooperation of States parties to combat the smuggling of migrants by sea and sets out measures to be taken in response.

Article 7 on cooperation reads: "States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea."

Article 8 is on measures against the smuggling of migrants by sea.[4] These articles require States parties to cooperate to suppress the smuggling of migrants by sea. The establishment of jurisdiction over smuggling at sea is a prerequisite for the effective implementation of articles 7, 8 and 9.

Article 15 of the Organized Crime Convention requires States parties, inter alia, to establish jurisdiction when offences have been committed on board a vessel flying their flag. In addition and although this is not a requirement under the Convention or the Protocol, States parties may also wish to establish their jurisdiction over vessels on the high seas flying the flag of another State party as well as over those without nationality, as this will ensure the proper functioning of the measures provided for under articles 7, 8 and 9 of the Protocol.

To learn more about the smuggling of migrants by sea, see sections 2.8, 7.21 and 8.4.

Recommended resources

*United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988**

The provision relevant to cooperation in combating migrant smuggling by sea was modelled on article 17, Illicit Traffic by Sea, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

www.unodc.org/unodc/en/treaties/illicit-trafficking.html

For more information about article 17 refer to the *Practical Guide for competent national authorities under article 17 of the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances of 1988 and Maritime Drug Law Enforcement Training Guide: Reference Guide for implementing article 17, United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988.*

[4] See also articles 26, 27 and 28 of the Organized Crime Convention

The International Maritime Organization

The International Maritime Organization Secretariat cooperates with relevant United Nations agencies and bodies as appropriate in incidents involving persons rescued at sea and has participated in several seminars and conferences on the subject.

For more information visit www.imo.org.

United Nations Office on Drugs and Crime. *Competent National Authorities Online Directory.*

The database provides contact information for the competent authorities of more than 150 States or dependent territories that had been provided to UNODC, including information on specific procedures to be followed in urgent cases. The online Directory currently contains the contact information of over 600 competent national authorities, organized into thematic categories: extradition, mutual legal assistance, illicit traffic by sea and smuggling of migrants by sea.

www.unodc.org/compauth/en/index.html

International Maritime Organization. *Information Resources on Drug Smuggling*.

www.imo.org/includes/blastDataOnly.asp/data_id%3D28170DrugSmuggling_28January2010_.pdf

Weinzierl, Ruth and Lisson, Urszula, *Border Management and Human Rights: A study of EU Law and the Law of the Sea*, Berlin: German Institute for Human Rights, 2007.

This study examines special questions of human rights and maritime law that arise in connection with the protection of maritime borders.

This study is available from:

http://files.institut-fuer-menschenrechte.de/488/d75_v1_file_47c81c6053b74_Study_Border_Management_and_Human_Rights.pdf.

*United Nations, *Treaty Series*, vol. 1582, No. 27627.

6.12 Border cooperation

Article 11 of the Smuggling of Migrants Protocol (see section 7.12) contains measures for States parties to strengthen their border controls against the smuggling of migrants.

The requirement to strengthen basic border controls does not necessarily involve cooperation with other States, and such cooperation or coordination of border controls as may be needed will not generally require legislation. The strengthening of cooperation between agencies and establishment of direct channels of communication may require some legislation to ensure that the agencies concerned have the authority to cooperate and to allow the sharing of information that may otherwise be protected by confidentiality laws. Many of the issues raised by cooperation between border control agencies will be similar to those raised by cooperation between law enforcement agencies and by article 27 of the Convention.

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

Module 8 of the UNODC *Basic Training Manual* addresses international cooperation in addressing migrant smuggling.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

Promising practices

United Nations Office on Drugs and Crime Border Liaison Office Mechanism in East Asia

UNODC worked to establish and then consolidate Border Liaison Offices at a number of border crossing points in East Asia. The countries involved are Cambodia, China, Lao People's Democratic Republic, Myanmar, Thailand and Viet Nam—all signatories to a Memorandum of Understanding aimed at strengthening cooperation.

The concept behind the creation of the Border Liaison Offices was to reverse traditional attitudes and encourage cooperation between law enforcement units, and strengthen their capacity to share information, so that border responses can be cooperative and the value of jointly-held information is maximized.

The success of the Border Liaison Office concept has resulted in offices being established in 22 locations (44 offices), a major increase from the original four locations at the beginning of the project.

For more information, visit:

www.unodc.org/eastasiaandpacific/en/Projects/2007_01/Consolidation_and_Enhancement.html#3

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

Frontex, a European Union (EU) agency based in Warsaw, was created as a specialized and independent body tasked to coordinate the operational cooperation between Member States in the area of border security. Frontex started to be fully operational on 3 October 2005. The tasks of Frontex are:

- Coordination of operational cooperation between Member States in the area of management of external borders
- Assistance to Member States in the training of national border guards, including the establishment of common training standards
- Carrying out risk analyses
- Following the development of research relevant for the control and surveillance of external borders
- Assistance to Member States in circumstances requiring increased technical and operational assistance at external borders
- Providing Member States with the necessary support in organizing joint return operations

Frontex provides for coordination of operational cooperation between Member States in the area of management of external borders. As well as coordinating the cooperation of EU Member States, Frontex also pays attention to cooperation with third countries' border security authorities, in line with general EU external policy. In relation to establishing third country cooperation, Frontex:

- Builds and maintains an operation-level partnership with third countries, to provide the framework for intensifying operational cooperation
- Coordinates operational cooperation, including, for instance, exchange of information and experience, training cooperation
- Cooperates with third countries that have common goals in terms of border security

For more information about Frontex, visit: www.frontex.europa.eu/.

International Organization for Migration

The website of the International Organization for Migration contains information about border management systems and approaches to balancing facilitation and control:

> The holistic approach used by Australia appears to serve it well. Australia has determined that it is in its best interests to closely monitor movements into and out of the country. Aside from the comparatively small numbers involved in irregular migration, Australia

has maintained a fair control over the annual influx of immigrants through its universal visa arrangements.

Other countries, such as most African States, Canada, European Union Member States, the United States, and others, have to contend with land borders, which clearly change the dynamics of immigration in ways that demand somewhat different administrative arrangements from Australia.

European Union countries in particular are addressing issues related to the need to patrol along the "green borders". The European Union is progressing towards the establishment of a common border guard force, joint operations by Member States at external borders, the establishment of a core curriculum for border guard training and consolidation of all European provisions concerning border control.

In situations where this form of integration is not feasible, there are still opportunities for close cooperation and collaboration between States that share a common land border. The Canada/United States Smart Border Accord addresses a number of issues in this regard, and there are numerous examples of inter-State collaboration in exchange of information and operational coordination of border monitoring and detection activity.

Source: www.iom.ch/jahia/Jahia/about-migration/managing-migration/border-management-systems/balancing-facilitation-control.

International Centre for Migration Policy Development, Border Management

Since the beginning of the 1990s, the International Centre for Migration Policy Development has been involved in numerous national, bilateral and EU-level initiatives in the area of border management. The Centre has been focusing on the concept of International Border Management which enhances trade facilitation while at the same time increasing border security. The overall objective of Integrated Border Management—to have open, but well controlled and secure borders—is achieved through the full coordination and cooperation of all relevant stakeholders, especially border police, customs, veterinary and phytosanitary inspection.

www.icmpd.org

United States Immigration and Customs Enforcement

The United States Immigration and Customs Enforcement (ICE) is the largest investigative agency in the Department of Homeland Security. ICE is charged with enforcing a wide array of laws, including those related to securing the border and combating criminal smuggling.

ICE has partnered with federal, State, local and foreign law enforcement counterparts to create the Border Enforcement Security Task Force initiative, a series of multiagency task forces developed as a comprehensive approach to identifying, disrupting and dismantling criminal organizations posing significant threats to border security. The task forces are designed to increase information sharing and collaboration among the agencies combating this threat on both sides of the border.

The Task Force incorporates personnel from ICE; United States Customs and Border Protection; Drug Enforcement Administration; Bureau of Alcohol, Tobacco, Firearms and Explosives; Federal Bureau of Investigation; United States Coastguard; and the United States

Attorney's Office along with other key federal, State, local and foreign law enforcement agencies. Participating in the Task Force on the Southwest border is the Mexican law enforcement agency Secretaria de Seguridad Pública. Canadian Border Services Agency and the Royal Canadian Mounted Police participate in the Task Force along the Northern border.

Canada, Mexico and the United States work jointly under the Security and Prosperity Partnership for North America. The Border Enforcement Security Task Force is one of several working groups that was established or expanded to implement the partnership. The participating agencies aid with the collection and analysis of intelligence and coordinate and collaborate on investigative efforts to identify and dismantle smuggling organizations. The Task Force has been highly successful in combating violence in the Laredo area, which served as an impetus for the expansion of the programme.

For more information, visit:

www.ice.gov/pi/news/factsheets/080226best_fact_sheet.htm.

Organization for Security and Co-operation in Europe

In 1999, the Organization for Security and Co-operation in Europe launched a Border Monitoring Operation in the South Caucasus to assist countries in the reform and development of their border management capabilities. After the Border Monitoring Operation ended in 2004, the Organization continued to support efforts to build and strengthen border agency capacity. For instance, the Transition Institutional Support Programme was launched in May 2008, in line with the core principle of cooperation. This initiative illustrated how by bringing border officials from Georgia and its neighbouring countries together, the ability of border security and management agencies is strengthened to facilitate free and secure movement of people and goods across borders, while reducing transborder threats in the region. Training sessions for members of the Border Police of the Ministry of the Interior and the Revenue Service of the Ministry of Finance were organized to focus on effective coordination and cooperation among the Georgian agencies responsible for border security and management. The broader element included cross-border workshops for the border security and management for the agencies of Armenia, Azerbaijan, Georgia and Turkey.

Source and more information at www.osce.org.

Cross-Border Cooperation Process (Söderköping Process)

The member States of the Cross-Border Cooperation Process or Söderköping Process are Belarus, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovakia and Ukraine. Partners include the European Commission, the International Organization for Migration, the United Nations High Commissioner for Refugees and the Swedish Migration Board. The objective of this process is to support newly acceded EU Member States in strengthening their migration and border management, as well as their refugee protection capacity.

http://soderkoping.org.ua/

Integrated Border Management Programme of the International Centre for Migration Policy Development

The overall objective of the Integrated Border Management Programme is to support the development of a more efficient and coherent Integrated Border Management System at

selected main border crossing points in order to facilitate the legal movements of goods and persons, while at the same time better combating transnational crime, illegal migration and trafficking in human beings.

For more information on Integrated Border Management visit:

www.icmpd.org/ibm.html.

2004 US-Mexico Action Plan for Cooperation and Border Safety

On 20 February 2004, representatives of the Secretariat of Governance of the United Mexican States and Secretariat of Foreign Affairs of the United Mexican States and the Secretary of Homeland Security of the United States of America signed an Action Plan for Cooperation and Border Safety.

The Action Plan outlined the following objectives:

(a) Enhance existing media information and prevention programmes;

(b) Combat human smuggling and trafficking;

(c) Combat border violence;

(d) Intensify public outreach to prevent migrant crossings in high-risk areas;

(e) Coordinate responses to border emergencies;

(f) Ensure secure and orderly repatriations of Mexican nationals;

(g) Explore mechanisms, on a bilateral basis, to repatriate Mexican nationals to their places of origin;

(h) Strengthen consultation mechanisms between Mexican Consuls and Department of Homeland Security authorities;

(i) Strengthen the border liaison mechanism.

The Action Plan outlined specific actions concerning:

(a) Media prevention programmes;

(b) Combating human smuggling and trafficking;

(c) Border violence;

(d) Prevention of crossings in high-risk areas;

(e) Response to emergencies in the border zone;

(f) Secure and orderly repatriations;

(g) Repatriation to places of origin;

(h) Strengthening of the consultation mechanisms in the United States;

(i) Strengthening of the border liaison mechanisms.

To read the full Action Plan, visit:

www.migracioninternacional.com/docum/indice.html?mundo=usmexplanseg2004.html.

6.13 Cooperation in relation to travel and identity documents

Smuggling of Migrants Protocol

In article 3 of the Smuggling of Migrants Protocol on the use of terms, subparagraph *(c)* reads:

> "Fraudulent travel or identity document" shall mean any travel or identity document:
>
> (i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
>
> (ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
>
> (iii) That is being used by a person other than the rightful holder.

Article 13 on the legitimacy and validity of documents reads:

> At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The main purpose of the Legislative Guides is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The Guides lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The Guides have

been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations Office on Drugs and Crime. *Model Forensic Document Laboratory Guide* (forthcoming).

The UNODC *Model Forensic Document Laboratory Guide* is to be used to design and build forensic document examination and intelligence dissemination capacities. It is geared towards several levels of country and agency development from the most basic to most advanced capability. It aims at providing practical assistance for the establishment or upgrading of forensic document laboratories in the areas of staff skill and educational requirements to perform forensic document examinations and provide court testimony, intelligence alerts and training; acquire forensic science equipment, facilities, reference materials and databases; and provide general guidance for designing, establishing and maintaining a forensic document laboratory.

For more information about the forthcoming UNODC *Model Forensic Document Laboratory Guide* visit www.unodc.org.

International Criminal Police Organization Stolen and Lost Travel Documents Database

The database on stolen and lost travel documents is a strong tool for detecting the smuggling of migrants. Borders and ports around the world can be directly linked to the database through a secure International Criminal Police Organization (INTERPOL) channel. Countries can also contribute data to the database when they become aware of lost or stolen passports or travel documents.

The holder of information in the database is the country that owns the information. The system can be a powerful tool for the widest international cooperation, because when a country decides to upload data, all the information is accessible to all member countries in real time through the national bureau of liaison offices. Some restrictions can be applied for a specific reason so that the information is not accessible to some countries or regions, maybe for operational reasons. These restrictions can be changed at any time, but 99 per cent of the information loaded into the system is open to law enforcement. The spirit of the system is to share information globally.

How does the SLTD database work?

FIND and MIND

- Fixed Interpol Network Database (FIND)
  - National Offices have a fixed connection through a secure network to the Interpol General Secretariat and to the Stolen and Lost Travel Documents database. When a passport is shown at a border or airport checkpoint, an automatic query is sent to the INTERPOL central database. If the passport has been reported as stolen, all the National Bureaus are involved within seconds, as well as the border checkpoint where the document has been presented.

- Mobile INTERPOL Network Database (MIND)
  - The Mobile INTERPOL Network Database (MIND) is an external hard disk that provides offline access to the INTERPOL databases.
  - The MIND is managed and updated daily by the INTERPOL General Secretariat.
  - An external hard disk is connected to a dedicated workstation with a universal serial bus (USB).
  - The mobile configuration is for field use, for example in rural areas or by patrols.
  - Checkpoints can be organized wherever needed and can be moved easily.

International Support for the Stolen and Lost Travel Documents Database

Partners in the Stolen and Lost Travel Documents database project include:

- United Nations Security Council
- Organization for Security and Co-Operation in Europe
- Council of the European Union
- The Group of Eight
- International Civil Aviation Organization
- Asia-Pacific Economic Cooperation

For more information about the INTERPOL Lost and Stolen Travel Document database, visit: www.interpol.int.

Promising practices

Canada Border Services Agency Immigration Intelligence on Irregular Migration

- Document Integrity. Expertise on fraud detection, document security and identity issues is centralized in the Immigration Intelligence Branch. The Branch produces a full range of training packages, document alerts and tools relating to travel document fraud or document security issues which are disseminated to migration identity officers overseas, other government departments, airlines and foreign control partners in order to combat irregular migration including smuggling and trafficking. This capacity is complemented by document experts in regional intelligence units.

www.cbsa-asfc.gc.ca/media/facts-faits/030-eng.html

The Pacific Regional Immigration Identity Project

A regional approach to assisting in the detection, measurement, investigation, prosecution and prevention of identity fraud at the border:

- Development of an understanding of identity crime
- Regular and ongoing discussions between agencies

- Multiagency teams and training packages
- Collection of regional identity documents
- Legislative provisions
- Sharing of national examples within the region through the Pacific Regional Identity Project, Oceania Customs Organisation and the Pacific Islands Chief of Police
- The Oceania Customs Organisation and Pacific Islands Chief of Police Secretariats input into and support the Pacific Regional Immigration Identity Project in ensuring a multiagency approach

www.pidcsec.org

6.14 Cooperation in relation to training and technical assistance

Article 14 of the Smuggling of Migrants Protocol sets out the requirement for States to cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society to ensure that there is adequate training to combat the smuggling of migrants.

For promising practices and recommended resources on cooperation in relation to training and technical assistance, see Tool 10, section 5.

6.15 Cooperation for the return of smuggled migrants

Smuggling of Migrants Protocol

Article 18

Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.

2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.

3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

States parties are required to cooperate in the identification or determination of the status of their nationals and residents.

They are required to cooperate in ("facilitate and accept") the return of nationals and to consider cooperation in the return of those with some rights of residency, including by issuing the documents needed to allow such persons to return from countries to which they have been smuggled. The requirements to accept the return of nationals and to consider accepting the return of those with some right of residency are based on the status of those individuals at the time of return.

In most States, conformity with the requirements of article 18 would primarily involve the issuance of administrative instructions to the appropriate officials and ensuring that the necessary resources are available to permit them to provide the necessary assistance, though legislative amendments might be required in some States.

Legislation to facilitate return

Legislative amendments might be required in some States to ensure that officials are required to act (or in appropriate cases, to consider acting) in response to requests, and that they have the necessary legal authority to issue visas or other travel documents when a national or resident is to be returned.

In drafting such legislation, officials should bear in mind that any obligations in international law governing the rights or treatment of smuggled migrants, including those applicable to asylum seekers, are not affected by the Protocol or the fact that the State concerned has or will become a party to it (art. 18, para. 8).

Legislatures may wish also to consult the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[5] which provides for measures that go beyond those set out in the Protocol. In particular, article 67 of this Convention calls for cooperation "with a view to promoting adequate economic conditions for ... resettlement and to facilitating ... durable social and cultural reintegration in the State of origin".

For more on protection and assistance, see Tool 8.

Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

One of the tasks of Frontex is to provide Member States with the necessary support in organizing joint return operations. The role of the agency in joint returns is rather

[5] United Nations, *Treaty Series*, vol. 2220, No. 39481.

limited and concentrated on assistance to Member States organizing joint return operations.

www.frontex.europa.eu

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The *Legislative Guides*—formulated to accommodate different legal traditions—set out the basic requirements of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as the issues that each State party must address in implementing them.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

"Return of unlawful migrants and international cooperation", Background Paper, Bali-Budapest Returns Workshop, Perth, Australia, 13-14 May 2004

This background paper, prepared by the Australian Department of Immigration and Multicultural and Indigenous Affairs (Canberra, April 2004) for the Bali-Budapest Returns Workshop in Perth, Australia, outlines some key concepts and considerations with respect to the return of unlawful migrants and international cooperation in this respect. An excerpt from the paper is given here. The full version can be accessed via the web address below.

Return and International Obligations

Some central principles of return are:

1. The right of a state to determine who is allowed to remain on its territory, with the consequent right to remove unlawful migrants;
2. The responsibilities of states to accept the return of their citizens, and to reduce statelessness; and
3. The responsibility to deal with humanitarian issues, such as to meet protection and non-refoulement obligations and to ensure the safety of people being returned.

The right to leave and to return to one's country of citizenship (nationality) is enshrined in the Universal Declaration of Human Rights (General Assembly resolution 217 A (III) and has been reiterated, with different emphases, in other instruments. Therefore, in principle, Governments that acknowledge their obligations under these instruments should have no need to develop agreements for returning people to their country of citizenship. Practical, workable arrangements can, and often are, made between countries to effect returns. However, should the need for an agreement arise, the basic elements lie within the broad framework of relevant international instruments. The rights of States and the rights of the individual are key elements set out in those instruments and should be maintained in agreements. When States undertake to maintain the rights

of individuals there is a greater likelihood that return will be voluntary and sustainable. The need for return to be sustainable also underscores the positive role of development projects as preventive measures that reduce the risk of recurrent unlawful migration.

While States have an obligation under international law to accept the return of their citizens, returning States continue to experience some key obstacles to return, including situations where:

1. Countries of national origin will not accept back their citizens;
2. Countries of national origin do not accept that the returnee is a citizen, and/or have restrictive policies on citizenship;
3. Countries of national origin will not accept return when their citizen refuses to cooperate (for example by signing appropriate forms or by communicating with consular representatives); and
4. The provision of identity and travel documents to returnees is delayed for long periods.

Difficulties in returning unlawful migrants have widespread ramifications:

1. Host states may bear accommodation and other related costs of those to be returned;
2. There may be increased public dissatisfaction with migration and return processes as a result;
3. Failure to return puts pressure on managing orderly migration flows, including such diverse groups as guest workers and asylum seekers;
4. The breakdown and failure of return mechanisms acts as a major pull factor to unlawful migrants and those seeking to circumvent orderly migration channels—others are encouraged to abuse systems and try their luck, compounding problems in host countries; and
5. Delayed return also encourages smugglers to continue "selling" transport routes and destinations, putting persons at physical risk, and profiting from those families and communities least able to afford it.

Return and protection issues

If States administer refugee or other humanitarian determination systems, the principles underpinning these processes are undermined if persons not in need of protection cannot be returned to their country of citizenship or usual residence, or if the process of return is unduly protracted through a lack of cooperation by the individual and/or States.

For example, if States are unable to return unsuccessful asylum seekers, public confidence in asylum systems is weakened, and support for those refugees in greatest need is placed at risk.

This lack of confidence can motivate verbal and physical attacks on ethnic minorities.

The principles of asylum are also undermined if people are repatriated to countries where their safety is not ensured. This can occur when States do not distinguish between groups within unlawful migrant flows, and subsequently return those with genuine protection claims, and when decisions and actions are taken in isolation from protection and humanitarian issues.

Cooperation in practice

Cooperation between States on return issues can take place formally or informally. Informal mechanisms may be arranged through personal contacts and identified contact points between counterpart agencies. These mechanisms suffice when returning unlawful migrants in all but the most complex cases. Formal mechanisms can be in the form of Memorandums of Understanding, exchanges of Diplomatic Notes or Safe Third Country Agreements (where national legislation requires it).

Where informal arrangements are inefficient, bilateral return agreements that facilitate the speedy and safe return of individuals to their country of nationality can be pivotal in addressing identified problems of return. Arrangements with countries of national origin for the return of their citizens rely on cooperation between States in operational matters such as establishing identity and confirming travel documentation.

While many States have found bilateral agreements helpful, others consider that they are redundant in view of existing principles in international law obliging states to readmit their citizens. Some States have found that despite having a readmission or return agreement in place, return can still be subject to delays.

A matter where bilateral cooperation has proven to be valuable is in the prevention of unlawful or unauthorized movements. In this context, continued cooperation and communication between states on a range of issues, including those related to return, is important. Cooperation between States can take many forms and include sharing information, such as information on prior protection, trafficking and document fraud, and assisting to prevent unlawful migration through interception, while ensuring that any protection needs are met. Every country is potentially a transit point for unlawful movements of people or a target for traffickers and smugglers bringing in, or sourcing, illegal workers.

The success of interception activities relies on the cooperation of States in sharing information and in joint operations. Protection issues can be a concern during interception. If the State does not have established protection determination mechanisms, there may be a role for the United Nations High Commissioner for Refugees and for States to agree on a process for assessing any protection claims and in ensuring international protection is available, if required.

Role of international organizations

Generally, international organizations recognize the importance of return and strive to support and facilitate cooperative action of States, whether individually, bilaterally, regionally or internationally. Where it is considered helpful, international organizations can facilitate and provide a platform for States to discuss and develop mechanisms for bilateral and regional dialogue on return issues, and can coordinate regional efforts.

International organizations can assist through facilitating discussion on:

1. Information sharing;
2. Development of technical skills;
3. Managing orderly migration;
4. Negotiating agreements; and
5. Unilateral action that can have negative consequences for other States.

http://docs.google.com/gview?a=v&q=cache:70ZyrTVTVIEJ:www.baliprocess.net/files/ReturnsProject/Return%2520and%2520International%2520Cooperation%2520_Bali-Budapest_2004_.pdf+migrants+return+cooperation&hl=en&gl=uk

6.16 Information exchange

Smuggling of Migrants Protocol:

Article 10 Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:

(a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;

(b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;

(c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;

(d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;

(e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and

(f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

States are required to share information either on a voluntary basis or in accordance with existing agreements or arrangements. Without effective channels of communication, operational and general information cannot be obtained.

To summarize the requirements of Article 10 of the Smuggling of Migrants Protocol, States are required to exchange information about:

- Embarkation and destination points as well as routes, carriers, means of transportation known to be or suspected of being used by smugglers of migrants
- The identity and methods of smugglers of migrants

- The authenticity and proper form of travel documents issued by a State party and the theft or related misuse of blank travel or identity documents
- Means and methods of concealment and transportation of persons
- Legislative experiences and practices and measures to prevent and combat migrant smuggling of migrants
- Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the smuggling of migrants

Further to this, article 27 of the Organized Crime Convention encourages States to cooperate closely with one another. To enhance international cooperation in this respect, more effective systems of information sharing should be developed at the regional and international level.

More information on information exchange under the Smuggling of Migrants Protocol is contained in sections 6.16 and 7.15.

Legislative framework for information exchange

The exchange of information per se is not likely to require any specific legislative provisions. However, given the nature of some of the information that may be exchanged, amendments to domestic confidentiality requirements may be required to ensure that the information can be disclosed, and precautions may be needed to ensure that it does not become public as a result. Such changes may involve amendments to laws covering the media or public access to information, official secrecy laws and similar legislation to ensure an appropriate balance between secrecy and disclosure.

Prior consultation is advised before the information is exchanged, particularly where information is sensitive.

Recommended resources

The International Criminal Police Organization (INTERPOL) has a Colour Code Notice system that informs all 187 member countries about a specific fact. This can be a powerful law enforcement weapon as it has widespread circulation. It can be used to inform countries of individuals or methods involved in migrant smuggling:

Colour of notice	*Meaning of notice*
Red	A request to seek the arrest or provisional arrest of a wanted person with a view to extradite such a person based on an arrest warrant
Blue	A request for additional information about a person's identity or illegal activities in relation to a criminal matter
Green	Warnings or criminal intelligence about persons who have committed criminal offences and are likely to repeat these crimes in other countries
Yellow	Request for help to locate missing persons, especially minors, or to help identify persons who are not able to identify themselves
Black	Signifies request for information about unidentified bodies
Orange	Signifies warning to police, public entities and other international organizations of dangerous materials, criminal acts or events that pose a potential threat to public safety

The INTERPOL Orange Notice

The INTERPOL Orange Notice provides for the quick dissemination of information about smuggling of migrants. When INTERPOL learns of a new modus operandi for smuggling migrants, the General Secretariat issues an Orange Notice to all countries informing them of this. In this way, police from all countries can always contribute to increasing international capacity to fight the smuggling of migrants. When information is diffused on an international basis, countries are empowered to combat smuggling networks.

States sharing or receiving information:

- Should find out what procedures are in place in the State and follow them
- Should not share information in a way that would breach the domestic legislation of the State sharing the information
- Should only use information in a way that complies with the sending State's wishes
- Should always look for opportunities to share information that might help to stop or disrupt smuggling of migrants in other jurisdictions

States that receive information are obliged to comply with any conditions placed on the use of information by the country that sent it.

Migration Information Source

The Migration Information Source of the Migration Policy Institute provides fresh thought, authoritative data from numerous global organizations and Governments, and global analysis of international migration and refugee trends. A unique, online resource, the Source offers useful tools, vital data and essential facts on the movement of people worldwide.

The Migration Policy Institute Data Hub showcases in-depth and most recent data on immigrant trends and patterns in the United States and around the world. Research tools include United States State Data on the foreign born, maps of the foreign born, the World Migration Map, comparative charts and tables, the Global Remittances Guide and asylum data.

www.migrationinformation.org

Promising practices

Interregional information sharing

Programme on the East Africa migration route: building cooperation and information sharing and developing joint practical initiatives amongst countries of origin, transit and destination

The overall objective of this programme is to implement a series of initiatives to address the specific needs and requests for assistance by African target countries. The project is designed to form a key part of the European Union-Africa Dialogue and therefore addressed to authorities from East African countries with a particular focus on Intergovernmental Authority on

Development Member States responsible for border control and the fight against illegal immigration and trafficking in human beings, with a view to strengthening their respective organizational and managerial capacities to manage migration and developing their capacities in the fields of collecting and analysing intelligence in order to identify facilitators and disrupt their smuggling and related activities.

Amongst its specific objectives, the project aims: to establish a Migration Resource Centre and a network of contacts among officials and an ongoing forum and to establish a Regional Consultative Process for the exchange of information and best practice on migration management; to enhance the capacity of the targeted African countries, the Intergovernmental Authority on Development Secretariat and European Union Member States to collect and analyse intelligence relating to illegal migration in order to identify facilitators and disrupt their activities; to organize two technical workshops on key thematic migration issues; to address key gaps in the region's border and migration management structures; to provide training to officials from East African countries on technical and policy migration management topics; to inform potential irregular migrants via targeted publicity campaigns of the dangers of irregular migration; and to assess the feasibility of undertaking a joint operation in an African country to disrupt illegal migration.

More information about this initiative is available at www.africa-union.org/root/ua/conferences/2008/mai/sa/12-14mai/igad.htm.

Regional information sharing

European Police Office Analytical Work Files

The European Police Office (Europol) operates a system of Analytical Work Files. An Analytical Work File is the primary means by which Europol offers operational analytical support to investigations within the Member States. The purpose is to assist Member States in preventing and combating the forms of criminality associated with the facilitation of the entry and residence of illegal immigrants in the European Union by organized criminal groups. Analytical Work Files use a target group oriented approach. Information on how to request the opening of a target group is available in all European Union languages via the Europol National Units. Operational and personal data can be exchanged between the members of an Analytical Work File, with analytical support provided by Europol. Any third State or international organization can contribute data to be used in an Analytical Work File and may, under special conditions, be invited to be an associated member of an Analytical Work File. Contributions to the Analytical Work Files have to be forwarded via the Europol National Units. Operational data accepted by an Analytical Work File can only be shared between the members of the Work File or the members of a specific target group.

National practices

Canada Border Services Agency Immigration Intelligence on Irregular Migration

The Immigration Intelligence network is an important element in the Canada Border Services Agency strategy for dealing with irregular migration to Canada. This strategy relies on intelligence-based decision-making to identify high-risk travellers while facilitating the movement of legitimate visitors, refugees and immigrants.

- Migration Integrity Officers. The Immigration Intelligence network has 45 Migration Integrity Officer positions in key locations overseas to work with other government departments, international partners, local immigration and law enforcement agencies

and airlines to combat irregular migration, including people smuggling and trafficking. The work of these officers has resulted in an interdiction rate of 72 per cent in 2003. This means that of all those attempting to travel to Canada by air using improperly issued documents, 72 per cent (more than 6,400 individuals) were stopped before they got to Canada. In addition, these officers have maintained a steady flow of key intelligence information which allows continual enhancement of the integrity of Canada's immigration programme.

www.cbsa-asfc.gc.ca/media/facts-faits/030-eng.html

Centre for Migration Information and Management (CIGEM), Mali

The Migration Information and Management Centre (CIGEM) is the result of cooperation between the Government of Mali and the European Commission for the purpose of providing a response to the migration phenomenon. It aims to help Mali come up with a migration policy that addresses the concerns of potential migrants, returning migrants and Malians residing abroad.

www.cigem.org

6.17 Other agreements or arrangements for cooperation

Smuggling of Migrants Protocol

Article 17

Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

(a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or

(b) Enhancing the provisions of this Protocol among themselves.

The measures provided for in the Smuggling of Migrants Protocol are intended to represent a global minimum standard.

The drafters specifically envisaged that some States would wish to implement more elaborate measures, in particular in response to problems that have only arisen or are seen as particularly serious in certain bilateral or regional contexts.

For example, two States parties with a specific cross-border smuggling problem might find it appropriate to develop a bilateral treaty or arrangement to expedite cooperation between them. States with similar legal systems, such as those in Europe, might be able to adopt streamlined procedures to take advantage of this. The legal or legislative requirements to implement this provision—which is not mandatory—will vary from country to country. In some cases, legislative or executive authority is required to enter into discussions or negotiations, while in others, legislation may be needed only to ratify or adopt the resulting treaty or to implement it in domestic law.

The words "agreements or operational arrangements" are intended to provide for options ranging from formal legal treaties to less formal agreements or arrangements.

Recommended resource

Model [bilateral] police cooperation agreement of the International Criminal Police Organization

The International Criminal Police Organization (INTERPOL) has drafted a model police cooperation agreement for INTERPOL member States looking to increase their

level of cooperation. Although drafted as a bilateral agreement, with some amendments the model could be used as a regional agreement.

The model agreement provides for a number of different cooperation methods. The widest possible cooperation is encouraged, but the model is drafted in such a way that the general framework can be adapted by States wishing to limit the ways in which cooperation can be carried out (for instance, by omitting provisions such as those dealing specifically with special investigative techniques), to limit the grounds for cooperation (for instance, by drafting an exhaustive list of offences covered by the agreement) or to limit both the ways in which cooperation is carried out and the grounds on which that cooperation takes place.

The model agreement contains explanatory notes for each article, to facilitate the understanding and amendment of the suggested provisions.

The model agreement is available at:

www.interpol.int/public/ICPO/LegalMaterials/cooperation/Model.asp.

Promising practices

Promising interregional cooperation practices

Asian-African Legal Consultative Organization

The Asian-African Legal Consultative Organization was an outcome of the Bandung Conference held in Indonesia in April 1955. Among the purposes of the Organization is to serve as a forum for Asian-African cooperation and information exchange on legal matters.

In its 20 August 2009 resolution on the special meeting on Transnational Migration: Trafficking in Persons and Smuggling of Migrants (AALCO/RES/48/SP1), the 48th Session of the Asian-African Legal Consultative Organization encouraged Member States:

- To ratify and accede to the Organized Crime Convention and its supplementary Protocols
- To consider holding regional and intraregional meetings in order to coordinate efforts to combat both human trafficking and smuggling of migrants
- To address these issues from a human rights perspective with an emphasis on protecting and assisting victims of human trafficking and smuggled migrants

Additionally, the Asian-African Legal Consultative Organization directed the Secretariat to monitor and report on developments in the above regards, mandated the Secretary-General to constitute an open-ended Committee of Experts to conduct a study on ways and means to enhance mutual legal assistance in criminal matters among Member States and placed the item on the provisional agenda of its 49th Session.

More information about the Asian-African Legal Consultative Organization is available at: www.aalco.int.

Joint Africa-European Declaration on Migration and Development

Tripoli, 22-23 November 2006

Signatory States from both continents agree to further cooperation with respect to issues of:

1. Migration and development
2. Migration management challenges
3. Peace and security
4. Human resources and brain drain
5. Concern for human rights and the well-being of the individual
6. Sharing best practices
7. Regular migration opportunities
8. Illegal or irregular migration
9. Protection of refugees

Included among its objectives with respect to illegal or irregular migration, the Signatories to the Declaration commit:

- To extending support for building institutional capacity in countries of origin and transit
- To enhancing efforts to criminalize trafficking and smuggling and punish perpetrators
- To cooperating in all spheres, including return and readmission of illegal migrants to their country of origin
- To cooperating to develop border control measures
- To cooperating with respect to information campaigns to educate vulnerable people about the dangers of illegal migration and exploitation

Joint Declaration of Association of Southeast Asian Nations and China on Cooperation in the Field of Non-Traditional Security Issues

On 4 November 2002, Heads of State and Government of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam as well as the People's Republic of China met at the 6th Association of Southeast Asian Nations-China Summit. Participants were determined to further strengthen and deepen cooperation in the field of non-traditional security issues.

Specific priorities for strengthened cooperation were listed as follows:

1. The priorities at the current stage of cooperation are combating trafficking in illegal drugs, people-smuggling including trafficking in women and children, sea piracy, terrorism, arms-smuggling, money-laundering, international economic crime and cybercrime;

2. On the basis of deepening the existing multilateral and bilateral cooperation;

   (a) To strengthen information exchange;

   (b) To strengthen personnel exchange and training and enhance capacity-building;

   (c) To strengthen practical cooperation on non-traditional security issues;

   (d) To strengthen joint research on non-traditional security issues; and

   (e) To explore other areas and modalities of cooperation.

More information is available at: www.aseansec.org/13185.htm.

Dialogue on Mediterranean Transit Migration

Since its inception, the International Centre for Migration Policy Development has been deeply involved in the creation and development of informal and flexible consultative structures between migration officials in sending, transit and receiving States with a view to preventing irregular migration and creating the conditions for legal migration. In the period 2002-2003, the International Centre explored the possibility of such an informal dialogue dealing with issues related to transit migration through the Mediterranean region in the framework of the project "Establishing of intergovernmental dialogue on migration issues in the Mediterranean region", partly funded by the European Commission. The results of this exploratory phase exceeded expectations and participating States called for a continuation of this dialogue through the creation of the Dialogue on Mediterranean Transit Migration. The International Centre for Migration Policy Development was requested to serve as its Secretariat.

Participants

The countries involved in the Mediterranean Transit Migration Dialogue comprise the Arab Partner States on the Southern and Eastern side of the Mediterranean, namely Algeria, Egypt, Lebanon, Libya, Morocco, Syria and Tunisia, and, on the Northern shores, European Union Member States, as well as Norway, Switzerland and Turkey as European Partner States. The Dialogue also involves Australia as an observer, the Geneva Centre for the Democratic Control of Armed Forces, Europol, the European Commission, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), the General Secretariat of the European Union Council, the Intergovernmental Consultations on Migration, Asylum and Refugees, INTERPOL, the International Organization for Migration, the League of Arab States, the Migration, Asylum, Refugees Regional Initiative, the Economic and Social Commission for Western Asia, the United Nations High Commissioner for Refugees and UNODC as well as the Odysseus Network. Officials of the Ministries of the Interior, Intelligence and Security Services, Ministries of Foreign Affairs and Development Agencies are regular participants.

Guiding principles

The guiding principles of the Dialogue are that it should be intergovernmental, informal and State-driven. Intergovernmental means a concentration on State actors' concerns at various levels, from the technical to the political level. The Dialogue itself is entirely informal and non-binding thus enabling an open exchange of opinion whereby various perspectives are explored and acknowledged. Experience shows that such an informal forum can significantly

contribute to the opinion-forming of State officials, and be supportive of more formal dialogues and processes. Finally, the process is oriented towards the real and current concerns faced by Partner States, that is to say that it focuses on questions and topics of actual concern to the Partner States.

Policy context

The Dialogue aims at supporting current efforts undertaken at international, regional and sub-regional levels in Africa, the Middle East and Europe. To this end, it follows the guidance of the main European Union policy guidelines, such as the European Neighbourhood Policy, the Hague Programme, the MEDA programmes and the conclusions of the Council of the EU, in particular the Global Approach to Migration, as well as the guidance from the Rabat Process and the Tripoli Recommendations. In addition, regular participation at meetings in the context of other forums, such as the Euro-Med Process, the 5+5 Dialogue on migration in the Western Mediterranean and the Africa-Europe cooperation meetings, enables the Dialogue, through its Secretariat, to share its opinions and findings and ensure effective coordination and cooperation in its discussions and initiatives with other partners. Finally, the Dialogue fully respects and undertakes to promote the application of all relevant international legal instruments in the field of human rights and refugee protection, as well as combating of trafficking and smuggling.

Support instrument

In order to support Member States of the Mediterranean Transit Migration Dialogue and facilitate exchanges, the International Center for Migration and Policy Development, Europol and Frontex jointly created in 2007 the Interactive Map on Irregular Migration Routes and Flows in Africa, the Middle East and the Mediterranean Region, called MTM i-Map. For more on the MTM i-Map see Tool 4, section 2.

The Mediterranean Transit Migration Dialogue is financially supported by several participating states. The working languages of the Dialogue are Arabic, English and French.

Source: www.imap-migration.org/pages/en/whatismtm.php.

For more information about the Mediterranean Transit Migration Dialogue, visit the International Center for Migration and Policy Development: www.icmpd.org.

The working document Arab and European Partner States Working Document on the Joint Management of Mixed Migration Flows is available at:

www.icmpd.org/fileadmin/ICMPD-Website/MTM/FINAL_Working-Doc_Full_EN.pdf.

Promising regional cooperation practices

Treaty on European Union: Provisions on police and judicial cooperation in criminal matters

The provisions of the Treaty on European Union concerning cooperation in criminal matters call for closer cooperation between police forces, customs authorities, judicial authorities and other competent authorities in the member States, both directly and through Europol, for the purpose of preventing and combating crime.

The text of the Provisions on police and judicial cooperation in criminal matters is available at: http://europa.eu/eur-lex/en/treaties/selected/livre107.html.

Organization for Security and Co-operation in Europe Chiefs of Police Meeting: Brussels Statement (24 November 2006)

On cooperation among national police services to combat organized crime, participants in the Organization for Security and Co-operation in Europe (OSCE) Chiefs of Police Meeting:

- Reaffirmed their resolve to intensify efforts to combat organized crime and to introduce measures to continue and enhance cooperation in this field
- Underscored the need for a clear legal basis as a prerequisite for police cooperation at an intergovernmental level
- Underscored the crucial importance of information sharing between law enforcement agencies and in that context pointed to the role of data protection and data processing, effective and clear privacy legislation and complementarity of legal procedures
- Recognized the need for effective cooperation among law enforcement officers and prosecutors at an international level
- Reaffirmed that the United Nations Convention against Transnational Organized Crime was the major international instrument in the fight against organized crime and called for further and enhanced cooperation with the States parties and UNODC to ensure its full and proper implementation
- Acknowledged the major role of INTERPOL and underscored the need for national police to use operational databases and tools of INTERPOL to their full potential
- Acknowledged the major role of UNODC and other international and regional organizations

The Brussels Statement is available in English, French, German, Italian, Russian and Spanish at: www.osce.org/spmu/documents.html.

Police Cooperation Convention for South-East Europe

Albania, Bosnia and Herzegovina, Moldova, Romania, Serbia and Montenegro and the former Yugoslav Republic of Macedonia entered into an agreement to enhance police cooperation and mutual assistance with respect to common security interests. In addition to general cooperation measures, the Convention addresses specific matters, including the exchange of information, liaison officers, training, cross-border surveillance, undercover investigations, joint investigation teams and cross-border cooperation. The Convention was signed on 5 May 2006.

The text of the Police Cooperation Convention for South-East Europe is available at: www.eu2006.at/de/News/information/SEE_Police_Convention_270406_Final_text.pdf.

Senior experts group on transnational organized crime ("The G8 Lyon Group")

The group of eight (G8) has been cooperating to address international crime since its 1995 Summit. The Lyon Group is a group of senior experts mandated to enhance law enforcement and judicial cooperation. It was tasked to review and assist international agreements and mechanisms pitted against transnational organized crime and make recommendations to strengthen them. The Lyon Group presented 40 operative recommendations, which were

revised in 2002 to become the "G8 recommendations on transnational crime". They comprise principles, best practices and actions which represent the G8 commitment to improving its response to transnational organized crime.

Section C of the "G8 recommendations on transnational crime" dealing with migration-related crimes reads as follows:

> 1. We note the involvement of transnational organized crime in human smuggling and trafficking and call upon all States to enact measures to combat these crimes and to cooperate fully at all levels. We support the signing, ratification, and implementation of the United Nations Convention against Transnational Organized Crime and its two protocols against the smuggling and trafficking of human beings as one of the means to accomplish this objective.
>
> 2. We encourage States to criminalize migrant smuggling and trafficking in persons. We call upon States to improve their border controls and travel and identity documents. Member States are encouraged to assist other States to improve their documents to comply with the standards and recommendations of the International Civil Aviation Organization and to develop means to identify, seize and return to the issuing State, where appropriate, documents that are fraudulent or have been fraudulently used.
>
> 3. Law enforcement agencies, immigration services, passport issuing authorities and related agencies should cooperate against smugglers and traffickers, especially in the exchange of information on the transnational movement of organized criminals and other measures States may lawfully employ to apprehend smugglers and traffickers, to deny entry to criminals and the use of their territories for criminal activities, the establishment of mechanisms and agreements to affect this information exchange, and in criminal investigations. States should also ensure that these capabilities are effective in deterring and detecting movements of terrorists.

http://ec.europa.eu/justice_home/fsj/crime/structures/fsj_crime_structures_en.htm

Jakarta Centre for Law Enforcement Cooperation

The Jakarta Centre for Law Enforcement Cooperation, located at the Indonesian National Police Academy, was established as a bilateral initiative with the Government of Australia. It has a capacity-building and operational support mandate to foster cooperation and encourage increased communication with and between regional law enforcement personnel throughout the Asian and Pacific region in combating transnational crime. The ultimate goal of the Jakarta Centre is to contribute to enhancing regional law enforcement capacity to manage multijurisdictional investigations of transnational crime in the region. Among its strategies are:

- Strengthening law enforcement response capacity
- Strengthening investigation capability
- Contributing to the development of wider criminal intelligence skills and capacity to share and exchange criminal intelligence
- Strengthening domestic and international law enforcement partnerships and networks

More information about the Jakarta Centre is available at:

www.jclec.com/.

Task Force on Organised Crime in the Baltic Sea Region

The main objective of Task Force cooperation is to decrease organized crime in the Baltic Sea region. Additionally, the Task Force aims to minimize duplication of efforts and routing the information flow into one common channel when it comes to intelligence. The Task Force is a forum for discussing regional perspectives on certain matters at the EU and international level.

www.bstf.org/

Organization of the Black Sea Economic Cooperation working group on cooperation in combating crime, in particular in its organized forms

On 25 June 1992, the Heads of State and Government of eleven countries: Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Turkey and Ukraine signed in Istanbul the Summit Declaration and the Bosphorus Statement giving rise to the Organization of the Black Sea Economic Cooperation.

www.bsec-organization.org

Southern African Regional Police Chiefs Cooperation Organization

The Southern African Regional Police Chiefs Cooperation Organization is an international independent police organization in Southern Africa which liaises closely with INTERPOL. Its member States are Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe. The Constitutional objectives of the Organization are:

1. To promote, strengthen and perpetuate cooperation and foster joint strategies for the management of all forms of cross-border and related crimes with regional implications;

2. To prepare and disseminate relevant information on criminal activities as may be necessary to benefit members to contain crime in the region;

3. To carry out regular reviews of joint crime management strategies in view of changing national and regional needs and priorities;

4. To ensure efficient operation and management of criminal records and efficient joint monitoring of cross-border crime, taking full advantage of the relevant facilities available through INTERPOL;

5. To make relevant recommendations to Governments of member States in relation to matters affecting effective policing in the Southern African region;

6. To formulate systematic regional training policies and strategies, taking into account the needs and performance requirements of the regional police services/forces;

7. To carry out any such relevant and appropriate acts and strategies for the purposes of promoting regional police cooperation and collaboration, as regional circumstances dictate.

In practice, its tasks are:

1. To make relevant recommendations to Governments in relation to:

   a. Harmonization of legislation and accession and ratification of international conventions in matters relating to deportation, extradition, confiscation of proceeds of crime, repatriation of recovered exhibits;

   b. Promotion of mutual assistance on criminal investigations, detection and apprehension of cross-border offenders;

   c. Facilitation of the movement and attendance of witnesses to places of trial and any other matters which may become relevant from time to time;

2. To carry out any such relevant and appropriate acts and strategies for the purpose of promoting regional police cooperation and collaboration, as regional circumstances dictate.

More information about the Organization is available at:

www.interpol.int/Public/Region/Africa/Committees/SARPCCO.asp.

Eastern Africa Police Chiefs Cooperation Organization

The Eastern Africa Police Chiefs Cooperation Organization was founded in Kampala during the first meeting of Eastern African police chiefs, held in February 1998. The meeting resolved to set up an institutionalized body after emphasizing the need for a collective effort to curb cross-border crime within the region. The constitution of the Organization was signed in Khartoum on 20 June 2000 and came into force on 21 August 2002. The constitution recognizes the INTERPOL Subregional Bureau in Nairobi as its secretariat.

More information about the Organization can be found at:

www.interpol.int/Public/Region/Africa/SRBeasternAfrica.asp.

Political Governance and Security Programme of the Pacific Island Forum Secretariat

The Pacific Island Forum comprises 16 independent and self-governing States of the Pacific region. In October 2005, the Forum adopted a Pacific Plan to strengthen regional cooperation throughout these fragile island States. In support of that broader goal, the Political and Security Programme is primarily focused on law enforcement cooperation and building the capacity of law enforcement agencies to respond to transnational crimes.

More information about this initiative is available at:

http://forumsec.org/pages.cfm/political-governance-security/.

Pacific Islands Chiefs of Police

The Pacific Islands Chiefs of Police is an organization consisting of 21 members (States and territories) representing some 75,000 police officers. The organization aims to provide a voice on law enforcement issues and raise awareness of them. It also aims to identify trends in transnational organized crime and develop strategies to combat them, contribute to training initiatives to develop the law enforcement capacity of the region, promote information sharing

and intelligence and share best practices across the region. It is a mechanism for interaction and cooperation throughout the region.

More information about the Pacific Islands Chiefs of Police is available at:

www.picp.org/.

The Judicial Cooperation Unit of the European Union (Eurojust)

The European Union has established a liaison network of prosecutors (Eurojust) in order to deal more efficiently with cross-border crime, particularly that committed by organized transnational criminal groups. Each Member State nominates one prosecutor to join Eurojust, based in The Hague. Eurojust aims to enhance cooperation and coordination between national investigating and prosecuting authorities, allowing all law enforcement agencies to act more effectively, both individually and collectively. It does this by:

- Stimulating and improving coordination of investigations and prosecutions between competent authorities in EU member States.
- Taking into account any request emanating from a competent authority of a member State and any information provided by competent bodies by virtue of provisions adopted within the framework of the treaties.
- Improving cooperation between competent authorities of member States, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests.
- Supporting competent authorities of member States to render their investigations and prosecutions more effective when dealing with cross-border crime.

More information is available at:

http://eurojust.europa.eu/index.htm.

European Judicial Network

In addition to Eurojust, the European Judicial Network has been established within the European Union to promote and accelerate cooperation in criminal matters, paying particular attention to the fight against transnational organized crime. The contact points in this network function as active intermediaries with the task of facilitating judicial cooperation between European Union Member States. They also provide necessary legal and practical information to the local judicial authorities in their own countries, as well as to the contact points and local judicial authorities in other countries, in order to enable them to prepare an effective request for judicial cooperation and improve or coordinate judicial cooperation in general. The European Judicial Network was the first practical structured mechanism of judicial cooperation in the European Union to become truly operational. Its key principle is to identify and promote people in each member State who play a fundamental role in judicial cooperation with respect to criminal matters, with the purpose of ensuring the proper execution of mutual legal assistance requests.

For more information, visit:

www.ejn-crimjust.europa.eu/ and more specifically www.ejn_crimjust.europa.eu/ejn_tools.aspx.

South-East European Cooperative Initiative Regional Center for Combating Trans-border Crime

The Southeast European Cooperative Initiative brings together 13 member States in South-eastern Europe in an effort to combat organized crime. At the Regional Center in Bucharest, police and customs liaison officers facilitate information exchange between law enforcement agencies in the participating States. Requests for regional assistance are sent to the Center from the national office of each individual State through its liaison officer, who then disseminates them to the appropriate State liaison officers. The Agreement on Cooperation to Prevent and Combat Trans-border Crime was signed by member States of the Initiative in 1999 and entered into force in 2000. The approach of the Center to irregular migration in the region is that of an expert service provider. Thinking regionally and developing strategic knowledge about the common issue is followed by action according to member countries' needs, by offering a friendly cooperation environment in order to share information and organize common investigations, operations and trainings.

For more information, visit: www.secicenter.org/

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Tool 7

Law enforcement and prosecution

7

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Contents

Overview 1

7.1 Code of Conduct for Law Enforcement Officials 3
7.2 Principal considerations when investigating smuggling of migrants 6
7.3 Snapshot of investigative methodologies 8
7.4 Reactive investigation 10
7.5 Proactive investigation 12
7.6 Disruptive investigation 14
7.7 Financial investigation 17
7.8 Seizure of assets and confiscation of proceeds of crime 20
7.9 Special investigative techniques 24
7.10 Investigating the smuggling of migrants: crime scenes 28
7.11 Indicators of smuggling of migrants (and trafficking in persons) 32
7.12 Border control measures 35
7.13 Travel and identity documents 39
7.14 Carrier sanctions 43
7.15 Intelligence gathering and exchange 45
7.16 Guidance on prosecution of smugglers of migrants 48
7.17 Seeking the collaboration of smugglers of migrants and smuggled migrants 52
7.18 Protection of witnesses 55
7.19 Ethnic, cultural, religious and linguistic considerations in using witnesses 58
7.20 Special considerations related to the protection of child witnesses 60
7.21 Responding to smuggling of migrants by sea 63
7.22 Detention of smuggled migrants 70
7.23 Return of smuggled migrants 72

Overview

This section offers criminal justice practitioners a basic overview of the considerations relevant to investigating and prosecuting the smuggling of migrants and related crimes:

7.1 introduces a key code of conduct for law enforcement officials;

7.2 outlines the principal considerations that law enforcement officials should take into account when investigating the smuggling of migrants;

7.3 offers a snapshot of investigative methodologies that can be used in investigating smuggling of migrants and related crimes;

7.4 takes a closer look at reactive investigation methodologies;

7.5 is concerned with proactive investigation methodologies;

7.6 is about disruptive investigation methodologies;

7.7 takes a closer look at financial investigation methodologies, outlining key financial transactions that may be made in operations to smuggle migrants, offering opportunities for financial investigation;

7.8 deals with the seizure of assets and the confiscation of proceeds of smuggling of migrants and related crimes;

7.9 is an introduction to special (or covert) investigative techniques that may be used in investigations into the smuggling of migrants;

7.10 outlines some key features of crime scenes connected with the smuggling of migrants that investigators may need to respond to;

7.11 provides a list of non-exhaustive indicators that may signal smuggling of migrants or trafficking in persons and should invite further inquiry;

7.12 discusses border control measures;

7.13 looks at the issue of travel and identity documents and offers some resources to further facilitate understanding of document misuse and abuse;

7.14 investigates the requirements of carriers (transport providers) in respect of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;[1]

7.15 explores the gathering and exchange of intelligence;

7.16 offers prosecutors an overview of considerations in respect of smuggling of migrants cases;

[1] United Nations, *Treaty Series*, vol. 2241, No. 39574.

7.17 outlines potential ways of overcoming the challenges of securing the collaboration of smugglers of migrants and smuggled migrants in the criminal justice process;

7.18 deals with witness protection;

7.19 outlines some basic cultural and linguistic considerations that must be taken into account in respect of interactions with witnesses;

7.20 highlights some special considerations involved in working with witnesses who are children;

7.21 considers the specific Protocol requirements with respect to combating the smuggling of migrants by sea;

7.22 underlines the rights that come into play with respect to the detention of smuggled migrants;

7.23 showcases the human rights considerations that must be respected in the return of smuggled migrants to countries of origin.

7.1 Code of Conduct for Law Enforcement Officials

Articles 1-8 of the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex) read as follows:

Article 1
Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2
In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3
Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4
Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5
No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6
Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7
Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8
Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

> Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

For the full version of the Code of Conduct for Law Enforcement Officials, with commentary, see www2.ohchr.org/english/law/codeofconduct.htm

Promising practices

Council of Europe. *The European Code of Police Ethics: Recommendation Rec10 and Explanatory Memorandum.* (2002)

The *European Code of Police Ethics* enshrines the basic principles that should apply to police services in democratic societies governed by the rule of law. It is more than a traditional code of ethics—it provides a general organizational framework for the police, their place in the criminal justice system, their objectives, performance and accountability. Some parts of the text are intended to serve as model provisions for national legislation and codes of conduct as well as principles for ethical policing.

http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=781

Recommended resources

United Nations Office on Drugs and Crime. *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*. New York, 2006.

The *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice* contains internationally recognized normative principles and standards in crime prevention and criminal justice. The *Compendium* consists of four key sections:

1. Standards and norms related primarily to persons in custody, non-custodial sanctions, juvenile justice and restorative justice;

2. Standards and norms related primarily to legal, institutional and practical arrangements for international cooperation;

3. Standards and norms related primarily to crime prevention and victim issues; and

4. Standards and norms related primarily to good governance, the independence of the judiciary and the integrity of criminal justice personnel.

www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world. Module 9 addresses the responsibilities of investigators.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime, United Nations Department of Peacekeeping Operations. *United Nations Criminal Justice Standards for United Nations Police.* New York, 2009.

The handbook summarizes the international human rights and criminal justice principles that United Nations police personnel must know, abide by and promote when deployed in peacekeeping operations and special political missions. As such, it is designed to serve a dual purpose. Firstly, it is a code of conduct for police operating under the United Nations flag. Secondly, it is a reference source to help national authorities to improve policing.

www.unodc.org/documents/justice-and-prison-reform/08-58900_Ebook.pdf

7.2 Principal considerations when investigating smuggling of migrants

There are some general considerations that investigators must bear in mind, irrespective of the type of investigation being conducted.

Risk

Investigations into the smuggling of migrants deal with human beings and real risks to life and safety. This includes a potential risk for law enforcers; for instance, sub-standard transport conditions may pose a health threat to officers who board boats if they are not specially equipped. This highlights the need for preparation.

Investigations involving offences against persons

An investigation into the smuggling of migrants is essentially the same as any other criminal investigation, but the human "commodity" being smuggled requires particular considerations. Because people are involved, time is of the essence. Planning is required so that special measures can be taken to ensure that human beings have their needs provided for. People can be victims of crime by virtue of having being smuggled—incidents where migrants become victims of crime should be approached in the same way as all other offences against persons.

Financial

Because financial transactions are a key element of the offence, all investigations should include some focus on the finances of the criminals involved. Financial investigations are addressed in section 7.7.

Other offences

Smuggling of migrants seldom stands alone as an offence. There is every likelihood that other crimes have been committed in conjunction with or during the process of smuggling of migrants. Some of these offences may be additional or incidental and charges may be brought for these if smuggling of migrants cannot be proved.

A list of other offences that may be involved in the commission of smuggling of migrants is given in Tool 5, section 4.

Before starting any investigation, investigators should consult a senior officer or prosecutor, as appropriate, in the jurisdiction in which they work. It is important that objectives be set and plans be put in place. For more on this, refer to the recommended resources below.

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 7 addresses other offences for which charges may be brought when prosecuting smugglers.

Annex II of this training manual provides guidance on planning and strategizing for investigations into the smuggling of migrants.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.3 Snapshot of investigative methodologies

In basic terms there are two types of investigation: reactive and proactive.[2]

Proactive investigations are those started by the investigators on their own initiative, often based on information and intelligence gathered. Proactive investigations often use specialist techniques (such as the use of informants and various forms of surveillance) to build evidence before progressing to actions such as arrests of suspects and victim rescue.

Example: Proactive investigation

Over a period of several months, a sharp increase in the numbers of irregular migrants from one province in Anyland has been reported in Anotherland. It is assumed the irregular migrants were smuggled. An investigation is launched.

Reactive investigations commence as a law enforcement response to a particular incident. A reactive investigation is one where information is received that an offence has been committed and includes situations where an immediate response is required.

Example: Reactive investigation

A boat is observed dropping several people off on a beach and the vessel is stopped by the coastguard.

A proactive operation can also stem from a reactive investigation or response such as the following:

1. Information is received that a boat is in trouble on the ocean. A reactive response is to send the coastguard.

2. The coastguard rescues those on board, who are smuggled migrants.

[2] *Note:* the terms "reactive investigation" and "proactive investigation" do not refer to administrative procedures. They describe two different methodological approaches when investigating a case. In civil law systems influenced by the French legal tradition, a proactive investigation usually takes place within the preliminary investigation (*enquête préliminaire*), whereas a reactive investigation usually is carried out in response to a red-handed offence (*flagrant délit*) and within a foreseen time limit.

3. The reactive investigation then begins, but could also result in a proactive investigation being developed, particularly if the reactive investigation finds insufficient evidence to charge someone.

In many jurisdictions, the distinction between what is a reactive and what is a proactive investigation may be blurred or non-existent.

Some jurisdictions have a strict set of criteria about when an investigation should start. It is important for investigators to understand the framework in which they are working.

Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 3 addresses investigative approaches to migrant smuggling.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.4 Reactive investigation

Reactive investigations are triggered by an event that requires an immediate law enforcement response. For example, customs officers open the boot of a car and find two people hiding inside. The need to protect life may provide less time and opportunity to amass as much evidence as may be possible in a proactive investigation. Frequently there may be suspects but no evidence. Investigators should, however, always bear in mind that a reactive response can be a starting point for a proactive investigation.

One of the most common types of reactive investigation comes about as the result of the discovery of people in the process of being smuggled. In a reactive investigation, the investigator is likely to be faced with:

- A number of people, which may include children, who might not speak the investigator's language
- A crime scene
- A confusing picture of events

It is the responsibility of the first investigator arriving on the scene to ensure that:

- Any threat to life is addressed
- Basic needs are met
- The human rights of smugglers and migrants are protected
- Order is maintained
- The brief facts are obtained, to detail what has happened
- Potential witnesses are identified
- The crime scene or place of arrest is secured
- Any suspects (smugglers) are detained and isolated from migrants where possible until other investigators or specialists arrive[3]

Once those actions are taken, the investigation can begin to move forward.

Once investigations begin, they are often dealt with as an isolated or one-off incident. This should not happen. In reactive investigations, investigators should ask themselves some of the following questions:

- Has this happened before?
- Were there previous tests of the route, carried out by the smugglers, to test the method (often known as dummy runs)?

[3] For more on smuggling of migrants crime scenes, see Tool 7, section 10.

- How many other trips have been made?
- Where is the money?
- What country do those smuggled come from and is it possible to approach that country and ask for assistance or advice in connection with the investigation?
- Have the migrants used transit countries? If so, can those countries be approached?

When the investigation is sufficiently thorough, reactive investigations can bring about excellent results with minimal expenditure and human resources.

The investigator's role does not end with the conclusion of an investigation. An investigator should aim to pass on lessons learned to front-line officers. These people are often the first to arrive on a scene and may be there for some hours before a more experienced officer arrives. Consider providing checklists or help cards to border, police or immigration officers. Rigorous intelligence collection may lead to proactive investigations.

Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 3 addresses investigative approaches to migrant smuggling.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.5 Proactive investigation

Proactive operations usually commence in response to information or intelligence received. Often, such investigations allow adequate time for investigators to carefully plan all stages of the investigation and to consider all standard and special investigative techniques (see section 7.9). In this type of investigation, the investigators have slightly more control over how they will collect evidence and seek to prove their case.

The key to a successful proactive investigation is intelligence and its use. Generally a proactive investigation will start as the result of an event that is brought to the attention of law enforcement officers. For example, law enforcers receive a phone call reporting suspicious activity. That event is usually researched in an attempt to establish if it is a one-off event or part of a series of similar or related events.

If investigators work separately from those who collect, collate or analyse intelligence, they must establish a close link that will protect the intelligence while allowing investigators to act when the time is right. Investigators must ensure that their colleagues in an intelligence section understand what they are trying to achieve and what they require from them.

It is important to ensure close cooperation between investigators and prosecutors and/or investigative judges. To ensure that evidence is admissible in court, consultation should occur at the earliest stage practicable.

Once the investigators have a picture of what is going on, they need to look at all potential uses of law enforcement tactics. Below is an example of a group engaged in the smuggling of migrants, with some indicators of how law enforcement can attack the group, that is, how law enforcement approach and tackle criminality in a proactive way:

Example: Proactive attack on a group smuggling migrants—Mr. C

Information is received that suggests that Mr. C is smuggling migrants into country B by concealing them in the backs of trucks. Once in country B, the migrants are delivered to a service station where they are collected by other vehicles.

Mr. C owns a haulage company. Investigations identify a mobile phone for Mr. C. Billing information received shows that every day a group of migrants have been smuggled, he has made a telephone call to Mr. H shortly before that group have been deposited at the service station.

Mr. H is subjected to both conventional and technical surveillance, using a tracking device, and he is seen visiting a house where a number of migrants are seen coming and going.

Surveillance is conducted at a service station and Mr. H is seen to collect a group of migrants who have recently left the rear of a truck. He takes them to the house and then goes and meets Mr. C at his office.

Mr. C, Mr. H and the driver of the truck are all arrested.

By using law enforcement techniques such as those described above, investigators are able to move quickly towards a conclusion. When commencing proactive investigations, objectives should always be set.

When the objectives of proactive investigations are set, consideration should always be given to what can be achieved to gain evidence or intelligence, with the secondary aim of disrupting a group's activities or preventing the illegal entry of some people.

For more on disruption see section 7.6.

Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 3 addresses investigative approaches to migrant smuggling.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.6 Disruptive investigation

Disruption aims to interrupt criminal activities, often without prosecuting or even arresting the key actors involved in the commission of those crimes.

The decision to employ disruptive techniques can come about for a number of reasons, namely:

- Where there is high risk to migrants demanding an immediate response that precludes proactive investigation
- Where a proactive investigation is not practicable for operational reasons, such as where geographical and/or topographical features make surveillance difficult, or where it is impossible to achieve undercover penetration of the network
- Where legislative, procedural or resource implications preclude the use of proactive techniques
- Where there is strong suspicion that an offence is about to be committed but insufficient evidence to warrant initiating prosecution or criminal justice disposal
- Where there are insufficient resources to pursue a criminal investigation
- Where a disruptive tactic forms part of an investigation, for example, the seizure of money being moved about by criminal parties, or the arrest of a low-level criminal involved
- Where there is a target hardening objective (identifying the method being used and making it more difficult for that method to be employed). For instance, safeguards may be introduced in passports to make them harder to forge
- Where disruption is the operational objective from the outset. That is, not to pursue a criminal investigation or judicial disposal, but to simply disrupt a criminal group's activity. This may not stop the smuggling but it may make it a great deal harder for criminal groups to operate

It is often the case that a decision is taken to disrupt an organized criminal group because either there is insufficient evidence to support a prosecution or it will take too long or be too costly (in terms of both finances and resources) to prosecute. It follows that disrupting a crime or criminal group is usually better than doing nothing at all.

Disruption can also be part of the operational plan. The criminal group may be disrupted either to force them to change their methodology to one that will suit investigators better, or to force more senior members of the group to take risks that they would not ordinarily take.

The following are examples of disruption to change criminal methodology or to force senior members of criminal groups to take risks:

- A forger is removed from a smuggling operation, thereby forcing the group to rely on methods other than using forged passports.
- A truck driver could be arrested the day before a smuggling operation is due to take place, forcing a senior member of the group to drive the truck himself, thereby exposing him.
- A criminal group regularly use a small airport, which has no permanent immigration presence to smuggle in groups of migrants. The pilot is arrested on the next flight and an immigration presence is established.

When seeking to disrupt for this reason, the aims of the action must be balanced against the risk that the organized criminal group will resort to a method that is more difficult to investigate or involves greater risks.

Finally, disruption may support an investigator's objective to make smuggling of migrants harder. While investigators are unlikely to be able to bring about changes in law or policy, senior officers or the judiciary may be able to exert some influence. Disrupting and reporting is an extremely useful tool to make investigation easier and criminal smuggling more difficult. In common with other approaches, the use of different disruptive techniques must be considered on a case-by-case basis.

Two key points should be noted with respect to disruptive techniques:

- Disruption may temporarily improve the situation, but it does not provide a solution and may only displace the problem. The use of organizations such as the International Criminal Police Organization (INTERPOL) or regional police organizations may assist in informing other countries of methods and trends and lead to advice on the possibility of displacement occurring.
- The key to success with the disruptive option is the use of creative and innovative multiagency tactics to create so many daily problems as to make it virtually impossible for smugglers to continue to operate in their current format or location.

Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 3 addresses investigative approaches to investigating the smuggling of migrants.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.7 Financial investigation

For an explanation of the financial transactions that take place during the smuggling of migrants process, see Tool 2, section 6.

Article 3, paragraph *(a)*, and article 6 of the Smuggling of Migrants Protocol explain that smuggling of migrants involves financial or other material benefit. It is recommended that all investigations of smuggling of migrants also include a financial investigation.

Financial investigation plays a crucial role in the successful investigation of smuggling of migrants. Early liaison should be established with the office that carries out financial investigation to make it part of the response to the smuggling of migrants: the trail of the money may lead to the smuggler.

Financial investigation involves the collection, collation and analysis of all available information with which to assist in the prosecution and to smugglers of migrants of the proceeds of crime. The action may target an individual, an entity or criminal organizations involved in the crime.

Financial transactions in investigations into the smuggling of migrants may include the following:

- Cash received from would-be migrants
- Payments by credit card or similar means for services (such as airline tickets, travel documents and accommodation)
- Payments for travel (such as airfares, payments to captains or boat owners, bus and train tickets)
- Money transfers to or from other parties locally and from abroad
- Foreign purchases (for example, a smuggler from Anyland buys a property to be used as a safe house in Anotherland)
- Receipts that are not commensurate with a person's occupation
- Corruption (for example, payment of officials to allow smuggled migrants to cross borders and/or use false documents)

Not only do financial investigations assist in investigations into the smuggling of migrants, they may also help to secure a conviction. In many cases, confiscation and seizure of assets may follow.

Irrespective of whether national laws require proof of financial or other gain, the investigation of an individual's finances will bring many advantages. Any opportunity to seize or obtain financial evidence or intelligence must always be taken. See section 7.8 on seizure and confiscation of the assets of smugglers of migrants.

Financial records may provide basic but useful evidence. Examples of types of financial records and the value they may offer to an investigation include:

Type of record	*Possible benefits*
Bank statements	Identification of income; travel bookings; receipts from named individuals and payments to others; location of a suspect at a specified time; identification of any weakness or routes for covert intelligence-gathering
Credit card bills	Travel bookings; location of a suspect at a specified time; identification of any weakness or routes for covert intelligence-gathering
Bank visits	Location of a suspect at a specified time; timing linkage to offence; cash deposited or withdrawn; payments to other accounts
Communication about sending or receiving payment	Indication of involvement of others higher up in the group hierarchy
Loyalty cards (for instance, bonus cards for shopping, airline cards for frequent flyer bonuses)	Indication of use of facilities: indication of use of airlines, where tickets have been paid for in cash; indication of purchases in supermarkets not consistent with family income
Money transfer slips or Western Union transfers	Indication of transfer of money to or from named individuals; indication of criminals in source, transit or destination countries; indication of where money is being laundered

As with all investigations, objectives should be realistic.

The example below highlights how some basic financial investigation techniques assisted in a migrant smuggling investigation:

- Financial gain is the motive for most crimes. The greed of criminals presents investigators with opportunities to develop tactics. Opportunities to seize cash, an effective disruption technique, should always be considered by investigators where permitted by national laws
- Suspicious financial transactions reported by banks or financial institutions should be investigated

Where there is no trained financial investigator, unless legal opinions or the advice of senior officers indicates otherwise, investigators might approach senior banking staff for guidance about financial systems. That could help investigators to understand how money is moved and suggest opportunities for attacking an organized criminal group.

Promising practices

A good financial investigation can lead to significant seizures, such as the following:

- As a result of undercover efforts, over €4 million were seized and given back to law enforcement authorities

- An organized criminal group bought two hotels on the French Riviera, together with two buildings in London. Those properties were seized by criminal justice authorities
- Safe houses and vehicles have been seized
- Many large boats have been seized around the world

Recommended resource

For an explanation of the financial transactions that may take place in the course of smuggling migrants, see Tool 2, section 6.

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 4 addresses financial investigations into cases of smuggling of migrants.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.8 Seizure of assets and confiscation of proceeds of crime

The following is an excerpt from the United Nations Convention against Transnational Organized Crime:[4]

United Nations Convention against Transnational Organized Crime

Article 12. Confiscation and seizure

1. States Parties shall adopt, to the greatest extent possible within their domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. States Parties shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 13 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

[4] United Nations, *Treaty Series*, vol. 2225, No. 39574.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

The seizure of money or assets can hurt criminals and prevent them from carrying out their illicit businesses or financing other criminal activities. Beyond this, the identification of the size of a criminal group and the profits it makes can significantly increase sentences imposed by courts.

Article 12 of the Organized Crime Convention attempts to bring States into conformity with one another to the extent possible within their respective legal systems. Although the article acknowledges the variation in the way that different legal systems carry out obligations domestically, States are nonetheless called upon to have a broad ability to comply with the provisions of the article. If this article is not implemented, States will be unable to respond to requests from other States to confiscate.

Article 12 requires States parties to have the necessary legal framework to permit:

- The confiscation of proceeds of crime derived from offences covered by the Convention or property the value of which corresponds to that of such proceeds (article 12, paragraph 1 *(a)*)
- The confiscation of property, equipment or other instrumentalities used in or destined for use in offences covered by the Convention (article 12, paragraph 1 *(b)*)
- The identification, tracing and freezing or seizure of the proceeds and instrumentalities of crime covered by the Convention, for the purpose of eventual confiscation (article 12, paragraph 2)
- The application of confiscation powers to transformed or converted property and proceeds intermingled with legitimately obtained property (to the value of the proceeds in question) and to benefit or income derived from the proceeds (article 12, paragraphs 3, 4 and 5).
- The power of courts or other competent authorities to order that bank, financial or commercial records be made available or be seized (bank secrecy is not a legitimate reason for failure to comply) (article 12, paragraph 6)

International cooperation with respect to confiscation and seizure

Article 13 of the Organized Crime Convention governs international cooperation with respect to confiscation and seizure.

Specific cooperation mechanisms are necessary to enable States to give effect to foreign freezing and confiscation orders and to provide for the most appropriate use of confiscated proceeds and property.

A State party that receives a request from another State party is required by this article to take specific measures to identify, trace and freeze or seize proceeds of crime for the purpose of eventual confiscation. Article 13 also describes the manner in which such requests are to be executed.

The two options provided for by article 13 are:

- *Indirect method.* According to article 13, paragraph 1 *(a)*, a State party that receives a request from another State party to confiscate proceeds of crime can submit the request to its competent authorities, obtain an order of confiscation and then give effect to it
- *Direct method.* According to article 13, paragraph 1 *(b)*, a State party that receives a request to confiscate proceeds of crime shall submit an order of confiscation to its competent authorities to be put into effect

Treaty and other arrangements or agreements for confiscation

By virtue of article 13, paragraph 9, States are to consider entering into bilateral and multilateral agreements to enhance the effectiveness of international cooperation with respect to confiscation.

Where a State party makes international cooperation for the purpose of confiscation conditional on the existence of a relevant treaty, article 13, paragraph 6, requires such a party to consider the Convention as the basis for cooperation for the purposes of confiscation.

Notification of the Secretary-General of the United Nations

Article 13, paragraph 5, requires that States notify the Secretary-General of the United Nations of any changes to laws and regulations that give effect to the implementation of article 13.

Disposal of confiscated proceeds of crime or property: article 14

Article 14 of the Organized Crime Convention addresses the final stage of the confiscation process: the disposal of confiscated proceeds of crime or property.

While such disposal is to be carried out in accordance with domestic law, article 14, paragraph 2, requires States parties requested to carry out confiscation to give priority consideration to returning the confiscated proceeds of crime or property to the requesting State for use as compensation to crime victims or for restoration to legitimate owners.

Promising practices

Australia

For an illustration of domestic compliance with the Organized Crime Convention with respect to the seizure of assets and confiscation of crime proceeds, see "Confiscation of the proceeds of crime: federal overview", Transnational crime brief No. 1, Australian Institute of Criminology, January 2008.

Available from: www.aic.gov.au/en/publications/current%20series/tcb/1-20/tcb001.aspx

Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 4 on financial investigation addresses the issue of asset seizure and confiscation.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.9 Special investigative techniques

The following is an excerpt from the Organized Crime Convention:

Organized Crime Convention

Article 20. Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating organized crime.

2. For the purposes of investigating offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principles of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 20, paragraph 1, of the Organized Crime Convention specifically endorses the investigative techniques of:

- Controlled delivery (for instance, of passports)
- Electronic surveillance
- Undercover operations

Article 20, paragraph 2, encourages States to conclude appropriate bilateral or multilateral agreements or arrangements for using special investigative techniques in the context of international cooperation.

Article 20, paragraph 3, states that in the absence of such an agreement or arrangement, decisions to use special investigative techniques at the international level should be made on a case-by-case basis and take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by States parties.

These techniques are particularly useful when dealing with sophisticated organized criminal groups, because of the dangers and difficulties inherent in gaining access to their operations and gathering information and evidence for use in prosecutions domestically and (through the provision of mutual legal assistance to other States parties) internationally. In many cases, less intrusive methods simply will not prove effective or cannot be carried out without unacceptable risks to those involved.

A key consideration in using special investigative techniques in operations relating to the smuggling of migrants is the risk posed to migrants by such techniques. There must be an intervention plan in the event that evidence emerges that a migrant is being harmed or is likely to be harmed.

Use of informants

An informant is a person who provides information to police about a crime: it may be a person who simply lodges a complaint or provides one piece of information to the law enforcement authorities or a person who has engaged in a lengthy relationship with members of a criminal group. All informants are potentially useful. An informant will play some part in most investigations.

In investigations of cases involving the smuggling of migrants, informants who are either smuggled migrants, smugglers of migrants or who have close connections to relevant "service" industries often make the best informants. It is important that potential informants are properly checked by investigators or specialist units (if specialist units exist). People who already belong to the community that is being investigated will generally make the best informants.

Informants may be able to provide information about:

- The structure and nature of the criminal organization
- Whether smuggled migrants are at certain premises
- When migrants are being moved and where they are being moved to
- The money trail of smuggling of migrants (how much money is paid, where is it paid from and to, what it is used for)
- Other matters related to smuggling of migrants

Considerations in using informants

Special considerations apply to the use of each type of informant:

- In recruiting and using informants, consideration must be given to the safety of the informant and any threat posed to migrants in using them.
- Protection of the informant's identity is essential.

- In selecting and using informants, consideration must also be given to the motives for providing information to law enforcers; some of those motives may be unethical, unlawful or even prejudicial to the success of law enforcement operations.
- There may be legal or local policies setting out the definition of an informant and rules governing their use and conduct. Before engaging in any activity that uses material provided by an informant, advice should be sought from a senior officer, prosecutor or the judiciary as appropriate.

Surveillance

Conventional (or physical) surveillance (for instance, following suspects on foot or in vehicles) can be used to keep particular suspects, premises or locations under observation. Electronic surveillance in the form of listening devices or communications interception performs a similar function to that of undercover operations and is often preferable where a close-knit group cannot be penetrated by an outsider or where physical surveillance presents unacceptable risks.

Electronic surveillance is generally subject to strict judicial control and numerous statutory safeguards to prevent abuse. Smugglers of migrants are often aware of surveillance techniques; investigators should be careful and creative.

Where investigators become aware through surveillance that victims are being harmed, they are obliged to intervene.

Undercover operations

Undercover operations may be used where it is possible for a law enforcement agent or other person to infiltrate a criminal organization to gather evidence. An undercover officer is a law enforcement officer who goes undercover (that is, pretends to be a criminal in order to learn information) to infiltrate a group. It is an extremely difficult and dangerous job; undercover operations should only be carried out by well-managed and properly trained staff.

An undercover officer can provide more information than an informant can; everything that an undercover officer sees or hears is potential evidence. Before an undercover officer is deployed, advice must be sought from a senior officer and/or prosecutor or the judiciary as appropriate.

Human rights considerations

The use of covert techniques is associated with a high level of responsibility on the part of the investigator to respect individuals' rights and freedoms balanced against the need to investigate crime. For example, listening devices concealed in vehicles or premises will often pick up private information that is not related to a criminal act. The officer-in-charge, if not required to do so by policy or law, should record how this type of material is to be handled. Prosecutors can provide assistance in balancing the rights of individuals affected by an investigation against law enforcement objectives.

Investigators should also keep in mind that some of the people smuggled, or with whom suspects come into contact, are victims or potential victims of crime and should be regarded as such.

Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 5 of the *Basic Training Manual* addresses covert investigative techniques.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.10 Investigating the smuggling of migrants: crime scenes

What might constitute crime scenes in cases involving the smuggling of migrants?

In general, a crime scene is any area where physical traces of crime are left. Scenes signalling the smuggling of migrants encompass:

- People: bodies and clothes of migrants and smugglers
- Vehicles within which migrants are being or have been transported, such as cars, trucks, buses, boats or planes
- Buildings where migrants have lived or are living, such as apartments, houses or barns
- Buildings that smugglers use, such as hotels, bars, travel agencies or airports

Given that cases involving smuggling of migrants have several stages, there are likely to be a number of crime scenes.

Physical traces that may be recovered at crime scenes include biological samples (such as blood, urine, saliva), fingerprints and other body-part prints, fibres and other micro-traces, documentary evidence, information technology and other electronic equipment.

What can be gained from the examination of a crime scene in a case involving the smuggling of migrants?

Evidence of individual crimes (assault for instance) can be found, as well as evidence determining who has been involved in the process and what role they have played.

By examining a scene in a case of smuggling of migrants, evidence of the following may be found:

- Smuggling of migrants
- Suspected smugglers of migrants
- Smuggled migrants and victims of crime
- The age of migrants
- Corroboration of a migrant's account
- The links between suspects, migrants, locations, vehicles, documents and so forth

Locations and items that may provide forensic evidence include:

- Offices. Offices may have employment records or evidence that shows who has been controlling a business

- Financial records. Such records may prove that a crime has occurred and may help locate money to be seized
- Sleeping places. Linking a person to a sleeping place reveals the conditions they were kept in; a sleeping place may also contain evidence of sexual crime or evidence hidden by smuggled migrants or other crime victims
- Work spaces. Examination of a work space may link a person to it and help prove exploitation
- Communication systems. Such systems can reveal links to other smugglers and prove that someone has been operating a smuggling business
- Vehicles. Vehicles may reveal who has been transported in them and conditions of transportation

Procedure for examining crime scenes

In general, at all crime scenes investigators must:

- Protect and preserve the scene
- Control entry and exit
- Preserve evidence
- Call in trained crime scene examiners or specialized investigators

As some migrants may be victims of crime, investigators should act so as not to destroy their potential trust. The safety of persons should always be borne in mind.

More specifically, at crime scenes related to the smuggling of migrants, investigators should:

- Tell people to remain where they are
- Note who is where
- Question people individually
- Ask people where their personal property is
- Protect scenes that have been identified. That may simply mean shutting a door. In some cases, however, an area may have to be covered. In the case of a vehicle, it may have to be taken to a dry, secure area. Records of every move and every person possibly in touch with evidence should be kept. Touching items with bare hands should be avoided, if possible
- Search people where laws permit. Anything that might provide evidence should be seized (see below for guidance on seizing property)
- Where victims of crime are identified, ask presumed victims not to change clothes although this could be difficult: victims' clothing can contain a lot of evidence. If victims are scantily clad, or sexual violence is suspected, they should be given clothing to cover themselves
- Avoid switching off electrical equipment, including for example phones and computers and not allow anyone else to switch it off
- Inform the crime scene examiner of what the investigator knows, including details such as where people were found

Seizing property

Ideally, investigators should wait for a crime scene examiner to arrive before seizing any property. For various reasons, however, that may be impossible. If property must be seized, investigators should:

- Record where items are before they are moved. Ideally they should be photographed, but drawings, plans and notes can be used
- Handle items as little as possible
- Record who has handled items
- Store items properly: anything with biological samples on it should be put in a container that can "breathe", such as a paper bag or cardboard box
- Clearly label who has recovered the sample and give the sample a unique reference number
- Obtain expert advice on what to do with electrical equipment if possible, otherwise switch it off at the mains. Equipment should not be switched on
- Seize and preserve anything with figures recorded in it. Experts can decide later if it is relevant

Clothing

Generally, the advice is that clothing should only be removed in the presence of specialist crime scene examiners. If possible, presumed victims should remain in their clothing until a trained person arrives.

If specialists are not available or will not arrive within good time, it may be necessary to remove a victim's clothing. Forcing a person to remain in dirty clothing may prevent them from cooperating with investigators and is possibly a breach of their human rights. Forcing them to remove their clothes is also a breach of their rights.

Investigators should explain to victims why it is important to stay in clothing until a trained person arrives, but if clothing has to be removed:

- It should only be removed with the consent of the person
- It should only be removed in the presence of people of the same sex as the victim
- The clothing and its condition should be photographed or recorded before it is removed
- Each item of clothing should be removed separately
- Each item of clothing should be removed with the person standing over a large, clean piece of paper
- Each item of clothing should be placed in the paper and wrapped individually
- A new piece of paper should be used for each item of clothing
- Each wrapped piece of clothing should be labelled with a unique number

Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 3 of the *Basic Training Manual* considers crime scenes connected with the smuggling of migrants.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.11 Indicators of smuggling of migrants (and trafficking in persons)

The following factors may indicate smuggling of migrants or trafficking in persons. This is a non-exhaustive list; there may be several other clues.

The presence of these indicators does not prove that smuggling of migrants or trafficking in persons has occurred, but may indicate that further inquiries should be made. Indicators can vary from country to country and from situation to situation: investigators should be aware of the intelligence potential of the situations they come across and not get drawn into making simple conclusions.

The smuggled person and/or (potential) victim:

- Does not know in which country he or she is
- Does not know through what countries he or she has travelled
- Does not give a credible explanation about the purpose of his or her trip
- Does not know a specific address where he or she is due to stay
- Does not have the name or phone number of the person or place where he or she is going to stay
- Indicates that he or she, at some point in time, should be at a particular location (in order to make contact with his or her supervisor)
- Has distinctive clothing or hairstyle (small groups of smuggled persons often have the same characteristics, such as clothing or bags of the same colour)
- Is often equipped with physical marks (text written on the arm, for example)
- Does not know how long he or she will stay at his or her next address
- Carries no money with him or her
- Is not in possession of his or her own travel documents or residence permit
- Is often in possession of false or forged travel documents or residence permit
- Often travels together with the smuggler or trafficker (possibly provable by plane, bus or train tickets)
- Has little or no luggage
- Has no personal belongings (family photos, address books)
- Does not know the people who he or she is travelling with

When a smuggler or trafficker is found together with a smuggled person and/or (potential) victim:

- The smuggler or trafficker will often be correctly documented

- The smuggler or trafficker will often have a heavily stamped passport to suggest that he or she is well travelled
- The smuggler or trafficker will often be in possession of the travel documents of the smuggled or trafficked person if he or she is documented
- The smuggler or trafficker may try to answer the questions posed to the smuggled or trafficked person
- The smuggler or trafficker often has a better appearance than the smuggled or trafficked person
- The smuggled or trafficked person will often be very quiet because he or she depends on his or her smuggler or trafficker
- The smuggled or trafficked person is often visibly in fear of or submissive to the smuggler or trafficker, because the smuggler or trafficker often uses violence or threatens to use violence
- The smuggled or trafficked person (in many but not all cases) has the same ethnic background as the smuggler or trafficker
- The smuggler or trafficker may claim that he or she picked up his or her passengers by chance

Vehicles used for smuggling migrants may:

- Have been altered (for instance, compartments built in to carry people, seals broken, extra fuel tanks, small compartments for hiding papers)
- Appear to be in very bad condition and not well looked after (and yet, some vehicles appearing to be in poor condition may have strong, well-maintained engines)
- Have broken seals or roof
- Have darkened windows

When faced with intercepted migrants, a strong but not sufficient indicator of trafficking in persons is if the fees for the smuggling have been advanced by the criminals who are carrying out the operation. The people concerned may also have been recruited for a particular job. However, the fact that a migrant has paid the fee does not mean that he or she has not or will not become a victim of trafficking.

The smuggler or trafficker:

- May be the only person who speaks the language of the transit or destination country, and/or he or she acts as an intermediary
- Is often the only person with a mobile phone
- May be the only person who has cash, receipts and phone numbers with him or her
- May have the travel documents of his or her fellow travellers with him or her
- Is often the only person who is well dressed and is distinct from those smuggled in terms of clothing and/or hairstyle
- Is often the only one with no luggage

- Is often the driver of the vehicle
- May (or may not) have a nationality that is different from that of the others in the group
- May try to give the smuggled or trafficked person or persons instructions, hints or directions

The potential smuggler or trafficker should be isolated from the smuggled and/or (potential) victim or victims, or migrant or migrants, as soon as possible.

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 2, addressing the role of smuggled migrants and smuggled migrants in investigations, offers some indicators that may be useful in identifying potential smuggled migrants.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Anti-Human Trafficking Manual for Criminal Justice Practitioners.* New York, 2009.

This training manual was developed in line with the Trafficking in Persons Protocol supplementing the United Nations Convention against Transnational Organized Crime.* Though the purpose of the Manual is to support prevention of trafficking in persons, the lessons learned there are applicable to smuggling of migrants.

Module 2 of this *Manual* is dedicated to indicators of trafficking in persons.

For more information about the training manual, visit www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html.

*United Nations, *Treaty Series*, vol. 2237, No. 39574.

7.12 Border control measure[5]

The following is an excerpt from the Smuggling of Migrants Protocol:

Smuggling of Migrants Protocol

Article 11. Border measures

1. Without prejudice to international commitments in relation to the free movement of people States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph1 *(a)*, of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 11 of the Smuggling of Migrants Protocol requires States parties to strengthen border controls to the extent possible and in addition to measures pursuant to article 27 of the Organized Crime Convention (Law enforcement cooperation, see Tool 6, section 3), to consider strengthening cooperation between border control agencies, including through the establishment of direct channels of communication (for more on border cooperation, see Tool 6, section 12).

[5] See Tool 6, section 12, on international border cooperation.

The practical result of strengthened border controls is increased difficulty for smugglers in using conventional means of transport and travel routes to enter countries. However, a possible negative side effect of strengthened border controls is the displacement of smuggling routes as smugglers change their methods. For this reason, international cooperation is absolutely imperative to combat smuggling of migrants effectively. (For more on international criminal justice cooperation, see Tool 6.)

Promising practices

UNODC United Nations Office on Drugs and Crime. *Border Liaison Office Mechanism in East Asia.*

A recent successful seven-year United Nations Office on Drugs and Crime (UNODC) project established border liaison offices at a number of border crossing points. The concept behind the creation of the Offices was to reverse traditional attitudes and encourage cooperation between law enforcement units working at the borders, thereby maximizing the value of jointly held information.

The success of the concept has resulted in offices being established in 22 locations (44 offices), a major increase from the original four locations at the beginning of the project.

www.unodc.org/eastasiaandpacific/en/Projects/2007_01/Consolidation_and_Enhancement.html

Australian border management

All visitors and permanent migrants to Australia must apply for a visa or a visa equivalent, with conditions appropriate to their stay. As part of the visa application process, all applicants are checked against the Movement Alert List, a database of people and travel documents of concern. It includes details of criminals who may pose a security risk and people barred from entering Australia for immigration breaches and health matters. It also includes details of lost, stolen and fraudulent travel documents.

Australia also has a network of immigration officers operating as airline liaison officers at about 14 key locations overseas. The airline liaison officers assist in screening Australia-bound travellers at the last points of embarkation to check for inadequate documentation. In some locations, Australia's airline liaison officers work cooperatively with the airline liaison officers of other countries, thus contributing to international action against people smuggling, human trafficking and other unlawful activities.

When travellers, including airline crew members, check in to travel to Australia, the airline is required to confirm—via the Advance Passenger Processing system—whether the travellers have current valid authority to travel to and enter Australia. Approximately 99.7 per cent of all air travellers to Australia are processed through the system. In less than four seconds, the passenger data are checked against Australia's passport, visa and alert lists and a message is returned to the airline staff telling them whether the person is "okay to board" or "not okay to board".

When the travellers arrive at the border, they may still be refused entry because of information revealed on arrival. If the document fails the test in the machine-readable material, it is referred to immigration officials for further investigation.

Source: Fact Sheet 70. Produced by the National Communications Branch, Department of Immigration and Citizenship, Canberra.

www.immi.gov.au/media/fact-sheets/70border.htm

Schengen (Agreement and Convention)

The Schengen Convention supplements the Schengen Agreement signed on 14 June 1985, and lays down the arrangements and safeguards for implementing freedom of movement. It entered into force in 1995. The Agreement and the Convention, the rules adopted on that basis and the related agreements together form the "Schengen acquis". Since 1999, this has formed part of the institutional and legal framework of the European Union by virtue of a protocol to the Treaty of Amsterdam.

Title IV of the Treaty establishing the European Community (EC Treaty) sets out the European Union's policy on "visas, asylum, immigration and other policies related to free movement of persons". These areas of Community action are linked to the progressive institution of an area of freedom, security and justice and cover the following:

- Free movement of persons
- External border controls
- Asylum, immigration and safeguarding of the rights of third-country nationals
- Judicial cooperation in civil matters

Regulation (EC) No. 562/2006 of the European Parliament and of the Council of Europe of 15 March 2006 establishes a European Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

For more information, visit: http://europa.eu/scadplus/glossary/index_en.htm

United States Immigration and Customs Enforcement—Border Enforcement Security Task Force initiative

United States Immigration and Customs Enforcement is the largest investigative agency in the Department of Homeland Security. The agency is charged with enforcing a wide array of laws, including those related to securing the border and combating criminal smuggling.

The United States' southern border has experienced a dramatic surge in cross-border crime and violence in recent years due to intense competition between Mexican drug cartels and criminal smuggling organizations that employ predatory tactics to realize their profits.

In response to this trend, the agency has partnered with federal, state, local and foreign law enforcement counterparts to create the Border Enforcement Security Task Force initiative, a series of inter-agency task forces developed as a comprehensive approach to identifying, disrupting and dismantling criminal organizations posing significant threats to border security. The task forces are designed to increase information sharing and collaboration among the agencies combating this threat on both sides of the border.

The initiative incorporates personnel from Immigration and Customs Enforcement; United States Customs and Border Protection; Drug Enforcement Administration; Bureau of Alcohol, Tobacco, Firearms and Explosives; Federal Bureau of Investigation; United States Coastguard; and the United States Attorney's Office, along with other key federal, state, local and foreign law enforcement agencies. Participating in the initiative on the south-west border is the Mexican law enforcement agency Secretaria de Seguridad Pública. The Canadian Border Services Agency and the Royal Canadian Mounted Police participate in the Border Enforcement Security Task Force along the northern border.

www.ice.gov/pi/news/factsheets/080226best_fact_sheet.htm

Recommended resources

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), the European Union agency based in Warsaw, was created as a specialized and independent body tasked to coordinate the operational cooperation between Member States in the field of border security. The activities of Frontex are intelligence-driven. Frontex complements and provides particular added value to the national border management systems of the Member States.

www.frontex.europa.eu/

Weinzierl, Ruth and Lisson, Urszula, *Border Management and Human Rights: A study of EU Law and the Law of the Sea*, Berlin: German Institute for Human Rights, 2007.

This study contributes to clarifying the obligations for border management arising from human rights and maritime law. This includes treatment of general human rights obligations that are also applicable for border controls at land borders and airports.

This study is available from:

http://files.institut-fuer-menschenrechte.de/488/d75_v1_file_47c81c6053b74_Study_Border_Management_and_Human_Rights.pdf

7.13 Travel and identity documents

The following excerpt is from the Smuggling of Migrants Protocol:

Smuggling of Migrants Protocol

Article 12. Security and control of documents

Each State Party shall take such measures as may be necessary within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13. Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol.

Pursuant to article 12 of the Smuggling of Migrants Protocol, States are required to ensure the integrity and security of their travel documents. Pursuant to article 13, States parties are also required, at the request of another State party, to "verify within a reasonable time" the legitimacy and validity of documents purported to have been issued by them.

Falsification of all kinds of legal documents occurs on a large scale throughout the world. New technologies mean that false documents can be produced more easily and criminal networks are able to provide smuggled migrants with false passports and other travel documents such as visas. Evidence also points to instances of corruption among immigration officers in league with smuggling networks and of corrupt embassy personnel providing visas for people trafficked abroad. Technical measures are required to make documents more difficult to falsify, forge or alter. Administrative and security elements are required to protect the production and issuance process against corruption, theft or other means of diverting documents.

Several kinds of technology that are new or under development offer considerable potential for the creation of new types of document that identify individuals in a unique manner, can be rapidly and accurately read by machines and are difficult to falsify because they rely on information stored in a database out of the reach of offenders, rather than on information provided in the document itself. (For more on cooperation in relation to travel and identity document control, see Tool 6, section 13.)

Promising practices

Australia: identity management

Biometrics is increasingly being used in Australia and other countries as a high-tech identity management tool. As part of a broader identity management strategy to strengthen identification processes for non-citizens entering Australia, the Department of Immigration and Citizenship is introducing biometric technology into some of its programmes and processes. This includes facial recognition and fingerprint matching technology.

Source: Fact Sheet 70. Produced by the National Communications Branch, Department of Immigration and Citizenship, Canberra.

www.immi.gov.au/media/fact-sheets/70border.htm

European Union: document security

To make sure that all European Union Member States are able to identify forged documents, the Council has agreed on the recommended equipment for border guards at the points of entry to the European Union and in visa departments to help detect false or falsified documents. To facilitate exchanges of information between Member States, the Council decided, in 1998, to set up a European image-archiving system: the False and Authentic Documents (FADO) system. The system makes it possible to validate, store and exchange information on genuine and false documents by computerized means within a very short time. The project is run by the General Secretariat of the Council of the European Union. The system was phased in online at the end of 2004.

http://ec.europa.eu/justice_home/fsj/freetravel/documents/fsj_freetravel_documents_en.htm

European Union: Public Register of Authentic Identity and Travel Documents Online

The General Secretariat of the Council has made the Public Register of Authentic Identity and Travel Documents Online (PRADO) accessible on the website of the Council of the European Union.

The Public Register is on a multilingual site for disseminating information on the security features of authentic identity and travel documents to the public.

The site is designed for the general public, including governmental and non-governmental organizations such as employers, postal services, banks and credit authorities, security and guarding companies and vehicle hire agencies.

www.consilium.europa.eu/prado/EN/homeIndex.html

United States Immigration and Customs Enforcement Forensic Document Laboratory

The United States Immigration and Customs Enforcement Forensic Document Laboratory aims to detect and deter travel and identity document fraud. Document examiners at the Laboratory perform forensic examinations of foreign and domestic travel and identity documents as well as handwriting, stamps, seals, printing and typewriting. Fingerprint specialists provide ink-to-ink fingerprint comparisons and process evidence for latent fingerprints. Ink chemists analyse writing inks, toners and inkjet printing, as well as document materials, to link and possibly date questioned documents. Laboratory staff also provide expert witness testimony on forensic examinations in judicial proceedings.

In addition, the Laboratory maintains the world's largest known repository of foreign travel and identity documents and reference materials. Intelligence officers of the Laboratory develop and present customized training programmes to law enforcement agencies around the globe on the detection of fraudulent documents and provide real-time assistance to field personnel in the identification of fraudulent documents. In addition they create and distribute Document Intelligence Alerts (colour photo bulletins highlighting fraudulent documents recently encountered) and reference guides to law enforcement agencies nationwide.

www.ice.gov/partners/investigations/services/forensiclab.htm

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex)

The Research and Development Unit of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) and the Swedish Presidency of the European Union organized a conference entitled "Biometric Technology for Border Control" (with industry exhibition) in Warsaw on 1 and 2 October 2009. More than 130 representatives of Member States and industry attended the event. The topics discussed included European Commission initiatives, standards and guidelines, automated border control systems, mobile equipment and issues such as security, data protection, costs and funding.

www.frontex.europa.eu

Documents related to the conference are available for download from:

www.frontex.europa.eu/specific_documents/other/

Recommended resources

United Nations Office on Drugs and Crime. *Anti-Human Trafficking Manual for Criminal Justice Practitioners.* New York, 2009.

This document contains a module relevant to document recognition in trafficking cases that is of key relevance to document recognition in cases involving the smuggling of migrants. For more information about this module, visit www.unodc.org or contact the UNODC Anti-Human Trafficking and Migrant Smuggling unit via ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Model Forensic Document Laboratory Guide*. (forthcoming)

The *UNODC Model Forensic Document Laboratory Guide* is to be used to design and build forensic document examination and intelligence dissemination capacities. It is geared towards several levels of country and agency development from the most basic to advanced capability. It is aimed at providing practical assistance for the establishment or upgrading of forensic document laboratories in the areas of staff skill and educational requirements to perform forensic document examinations and provide court testimony, intelligence alerts and training; to acquire forensic science equipment, facilities, reference materials and databases; and to provide general guidance for designing, establishing and maintaining a forensic document laboratory.

For more information about the forthcoming *UNODC Model Forensic Document Laboratory Guide* visit www.unodc.org.

7.14 Carrier sanctions

Carrier sanctions are basic measures recommended to help control the use of public carriers by smugglers of migrants. Carrier sanctions are contained in article 11 of the Smuggling of Migrants Protocol:

> **Smuggling of Migrants Protocol**
>
> **Article 11**
>
> 2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 *(a)* of this Protocol.
>
> 3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
>
> 4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

Drafters of legislation to implement the requirements of article 11 of the Smuggling of Migrants Protocol should give consideration to the following points:

- The basic obligation to be placed on carriers is to ascertain basic possession of whatever documents may be needed to enter the State of destination—there is no obligation to assess the authenticity or validity of the documents, or whether they have been validly issued to the person who possesses them.

- The Protocol requires that liability be attached to carriers for not having checked the documents as required; States may attach liability to carriers for having transported undocumented persons, but the Protocol does not require this.

- Article 11, paragraph 4, obligates States to provide for sanctions. The precise nature of such sanctions is not explicitly specified, but if criminal liability is to be imposed, drafters should consider article 10 of the Convention, regarding the obligation to provide for liability of legal persons.

- The relevant "travel or identity document" is understood to include any document that can be used for inter-State travel and any document commonly used to establish identity in a State under the laws of that State.

Recommended resource

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The *Guides* lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider in their efforts to implement the Convention and its Protocols. The *Guides* have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

7.15 Intelligence gathering and exchange

Information is something that is received by law enforcement.

For example: An anonymous phone caller informs police that Mr. G is smuggling migrants by boat.

Intelligence is information that has had something done to it to give it more meaning (for example, corroboration, analysis, evaluation).

For example: Following information received by the anonymous phone caller, police verify that Mr. G owns a boat.

As in any investigation, intelligence in cases involving the smuggling of migrants is extremely important. It can be used to initiate investigations or to develop ongoing investigations towards a satisfactory conclusion. Beyond the investigation (tactical intelligence), strategic intelligence helps in formulating policies and in making crimes more difficult to commit. Both types of intelligence are equally important.

Tactical intelligence supports the investigations.

Strategic intelligence concerns the bigger picture of smuggling of migrants.

Tactical intelligence:

- Forms the basis of investigations
- May lead to the interception of smuggling operations
- Is fundamental in the preparation and planning of any operation
- Helps identify specific opportunities to prevent, detect or disrupt smuggling networks

Strategic intelligence:

- Enables accurate assessment of the nature and scale of smuggling at the local, national and regional levels
- Facilitates changes in legislation, international liaison, prevention strategies, education and awareness-raising campaigns etc.
- Assists policymakers in planning
- Provides fundamental information to raise the awareness of the media and the general public

The overall picture of smuggling of migrants is formed by strategic intelligence, which is fed by tactical intelligence.

Promising practices

United Kingdom, Joint Debriefing Team

The Joint Debriefing Team consists of United Kingdom Border Agency Intelligence Directorate and Police Special Branches Officers who debrief asylum seekers, irregular migrants and other specified persons for intelligence purposes. The Joint Debriefing Team operates in several locations, gathering intelligence in respect of routes, agents, safe houses, smuggling costs and modi operandi. The Joint Debriefing Team disseminates its intelligence findings in the United Kingdom and throughout the world to initiate and support intelligence operations and produces informative handbooks on routes and modi operandi. It also collaborates with other law enforcement agencies around the world at an operational level. To read about Joint Debriefing Team work in respect of training, see Tool 10.

For more information, see www.homeoffice.gov.uk/.

Operation Bluesky

Operation Bluesky began as an intelligence-scoping exercise. Over a period of six months, 10 targets were identified as the most significant Turkish origin human smugglers within this network. Intelligence-gathering began, followed by tactical analysis of this scoping and the methodology of this network. The operational team carried out surveillance and began gathering evidence. Countries of high significance to this criminal network were identified and the intelligence dissemination process began. Meetings were held at the European Police Office (Europol) and the European Union Judicial Cooperation Unit (Eurojust) facilitating the sharing of intelligence. The network heads conducted their business in "secure cafes" in Green Lanes, North London. In the cafes, the subjects would make hundreds of telephone calls to their networks. They would call the illegal immigrants, sponsors, transport managers, drivers and overseas facilitators. Foreign intercept evidence was used as part of the investigation. It is estimated that 200,000 people were smuggled into the United Kingdom by this network.

On 11 October 2005, the intelligence phase of Operation Bluesky was successfully concluded. Fourteen residential and business premises were raided and 21 subjects were arrested. About 500 police officers took part in the raids. Approximately £70,000 in cash was seized. Large amounts of financial and human smuggling evidence, including 100 SIM cards and handsets, were seized as evidence. A press release was made, which was circulated throughout Europe.

The smugglers of migrants were surprised by arrests as the principle subjects considered themselves untouchable. The flow of false and forged documents was severely disrupted. There was a general rise in the price of smuggling from Turkey, with prices increasing to £7,000 from £3,500-£4,000 for transit to the United Kingdom. Operation Bluesky resulted in sentences amounting to about 65 years of imprisonment.

The East Africa Migration Route: building cooperation, information sharing and developing joint practical initiatives amongst countries of origin, transit and destination

In its migration policy framework document adopted in Banjul in July 2006, the African Union stated that comprehensive and balanced approaches to migration must be formulated. The African Union has also emphasized the need for greater capacity-building in the area of

migration management and urged member States to undertake such activities. This cooperative initiative is therefore in response to the requests by the African Union and East African member States. States' sustained interest in capacity-building through dialogue and technical assistance has also emerged as a matter of consensus in recent consultations between the International Organization for Migration, the African Union Department of Social Affairs and the Intergovernmental Authority of Development in Addis Ababa.

The overall objective of this programme is to implement a series of initiatives to address the specific needs and requests for assistance by African target countries. The project is designed to form a key part of the European Union-Africa Dialogue and therefore addressed to authorities from East African countries with a particular focus on Intergovernmental Authority of Development member States responsible for border control and the fight against illegal immigration and trafficking in persons, with a view to strengthening their respective organizational and managerial capacities to manage migration and developing their capacities in the fields of collecting and analysing intelligence in order to identify facilitators and disrupt their smuggling and related activities.

Recommended resource

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 6 of the Basic Training Manual addresses the collection, assessment, sharing, protection and use of intelligence.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.16 Guidance on prosecution of smugglers of migrants

The "Standards of professional responsibility and statement of the essential duties and rights of prosecutors", adopted by the International Association of Prosecutors, read as follows:

1. Professional conduct

   Prosecutors shall:

   - At all times maintain the honour and dignity of their profession
   - Always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession
   - At all times exercise the highest standards of integrity and care
   - Keep themselves well-informed and abreast of relevant legal developments
   - Strive to be, and to be seen to be, consistent, independent and impartial
   - Always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial
   - Always serve and protect the public interest; respect, protect and uphold the universal concept of human dignity and human rights

2. Independence

   2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

   2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:

   - Transparent
   - Consistent with lawful authority
   - Subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence

   2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

3. Impartiality

   Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

   - Carry out their functions impartially

- Remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest; act with objectivity
- Have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect
- In accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect
- Always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness

4. Role in criminal proceedings

4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.

4.2 Prosecutors shall perform an active role in criminal proceedings as follows:

- Where authorized by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally.
- When supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights; when giving advice, they will take care to remain impartial and objective.
- In the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence; throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence.
- When, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

4.3 Prosecutors shall, furthermore:

- Preserve professional confidentiality
- In accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights
- And similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible
- Safeguard the rights of the accused in cooperation with the court and other relevant agencies
- Disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial
- Examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained

- Refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights, and particularly methods which constitute torture or cruel treatment
- Seek to ensure that appropriate action is taken against those responsible for using such methods
- In accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young defendants, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate

5. Cooperation

In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall: cooperate with the police, the courts, the legal profession, defence counsel, public defenders and other Government agencies, whether nationally or internationally; and render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual cooperation.

6. Empowerment

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by Governments. In general they should be entitled:

- To perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability
- Together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions
- To reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them, and not to have their salaries or other benefits arbitrarily diminished; to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases
- To recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures
- To expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards
- To objective evaluation and decisions in disciplinary hearings
- To form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status; and to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics

Available from: www.iap-association.org

Recommended resources

Commission on Crime Prevention and Criminal Justice. *Resolution 17/2, annex.*

At its seventeenth session, held in Vienna from 14 to 18 April 2008, the Commission on Crime Prevention and Criminal Justice adopted resolution 17/2, entitled "Strengthening the rule of law through improved integrity and capacity of prosecution services". The full text of the International Association of Prosecutors Prosecution Standards was annexed to the resolution and States parties were requested to take those standards into consideration when reviewing or developing their own prosecution standards. In the resolution, the Commission requested the United Nations Office on Drugs and Crime to circulate the Standards to all Member States for comment.

More information about the Commission on Crime Prevention and Criminal Justice is available from www.unodc.org/unodc/en/commissions/CCPCJ/index.html.

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. Module 7 of the Basic Training Manual addresses legislative issues, including prosecution matters.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

7.17 Seeking the collaboration of smugglers of migrants and smuggled migrants

An investigation is most likely to advance and a prosecution is most likely to succeed when a smuggled migrant or smuggler of migrants agrees to participate in the criminal justice process.

Cooperating with smuggled migrants

It is difficult to persuade witnesses to come forward in relation to most crimes. Witnesses, including smuggled migrants, may be scared or intimidated for several reasons, including threats to their physical safety or that of their family at home, fear of being prosecuted as a party to the crime or fear of returning to the country from which they came.

To engender the trust and confidence required for cooperation, a migrant should be humanely treated and assured of protection by the law enforcement officials of the host country (see article 16 of the Smuggling of Migrants Protocol (discussed in Tool 8, section 1)).

There are several ways of trying to secure either cooperation or the admissibility of evidence. Such methods include but are not limited to:

- Requests to the immigration authorities for smuggled migrants who are witnesses to be allowed to stay (on a temporary or permanent basis)
- The use of video link testimony, if such facilities exist, so that a smuggled migrant who has been removed may still give evidence from his or her home country
- The provision of legal advice to the smuggled migrants prior to their being interviewed may help to ensure that they are aware of what they are doing and it may help reassure the judiciary that debriefs and witness interviews are being done properly (a statement made by a person who has already received legal advice may be viewed in a different manner from one that was obtained in other circumstances)
- The corroboration of evidence given by smuggled migrants using other means such as wiretaps or other witnesses
- Audio or video recording of witness interviews
- Where laws allow, consideration should be given to formally protecting the witness's identity, which may also include the provision of witness protection

Cooperating with smugglers of migrants

From time to time, smugglers of migrants, like other criminals, may either give evidence or provide information. Such evidence should be handled in the same manner as that provided by any other criminal and national policies must be complied with. Smugglers of migrants offer more to an investigation than a smuggled migrant, simply because they will know more

about how the organization works and runs. All opportunities to obtain this type of intelligence or evidence must be taken.

The following is an excerpt from article 26 of the Organized Crime Convention:

Organized Crime Convention

Article 26. Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in organized criminal groups:

(a) To supply information useful to competent authorities for investigative and evidentiary purposes on such matters as:

(i) The identity, nature, composition, structure, location or activities of organized criminal groups;

(ii) Links, including international links, with other organized criminal groups;

(iii) Offences that organized criminal groups have committed or may commit;

(b) To provide factual, concrete help to competent authorities that may contribute to depriving organized criminal groups of their resources or of the proceeds of crime.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

Article 26 of the Convention requires the taking of appropriate measures to encourage those involved in organized crime to cooperate with or assist competent authorities. The actual measures are not specified, but in many States they include the enactment of provisions whereby offenders who cooperate may be excused from liability or have otherwise applicable punishments mitigated. Some States have sufficient discretion in prosecution and sentencing to allow this to be done without legislative authority. Where such discretion does not exist, legislation that creates specific offences, establishes mandatory minimum punishments or sets out procedures for prosecution may require adjustment if the legislature decides to use mitigation or immunity provisions to implement article 26. This could be done either by establishing a general rule or on an offence-by-offence basis.

Recommended resources

The United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

www.unodc.org/unodc/en/treaties/CTOC/index.html#Fulltext

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

For more information on securing the cooperation of smuggled migrants and smugglers of migrants in the criminal justice process, see module 2 of the *Basic Training Manual*, which addresses the role of smugglers of migrants and smuggled migrants in investigations.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The *Legislative Guides*—formulated to accommodate different legal traditions—set out the basic requirements of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, as well as the issues that each State party must address in implementing them.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

7.18 Protection of witnesses

The following is an excerpt from the Organized Crime Convention:

Organized Crime Convention

Article 24. Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2 The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Witnesses may often be a strong resource in prosecuting smugglers of migrants. The rights and safety of witnesses should be taken into consideration. Conflict often arises between the need to keep the smuggled migrant in the country to support the criminal justice process (if the migrant has arrived at a destination country or is in transit) and the requirement to return the migrant to his or her country of origin. Some jurisdictions allow for temporary visas to enable smuggled migrants to stay and give evidence. Other jurisdictions allow them to stay indefinitely. Where legislation does not include such provisions, the following can be considered:

- Bringing the migrant back from his or her home country in time for the trial and returning him or her afterwards; or
- Using video or written media to transmit the testimony of the witness from his or her home country

Both of the above considerations are dependent in the first instance upon legal requirements and available resources. The second may be beneficial for the physical protection of the migrant and witness. If such methods have not been considered or tried before, it may be beneficial to reconsider them, taking the safety of the migrant and his or her family into account.

The role of the witnesses and the evidence they provide in criminal proceedings is often crucial in securing the conviction of the offenders, especially in respect of organized criminal groups. Key principles to bear in mind with respect to witness protection are discussed below.

Physical protection

Physical protection is particularly important when a witnesses is testifying against an organized criminal group. Such protection can range from simple and affordable measures (such as giving a witness a mobile phone) to more complicated resource-intensive measures (such as the domestic or foreign relocation of a witness or changing the identity of a witness).

Criminal prosecution of offenders or their accomplices for intimidating or threatening witnesses is another means of protecting witnesses.

Types of physical protection that should always be considered on the basis of individual circumstances are:

- Police escort to and from court
- Security in the courtroom (including checking for weapons)
- Keeping the victim informed of proceedings (especially where the accused person is released from custody)
- Protection for the witness's family

Psychological protection

Psychological protection includes the stabilization of the migrant's psychological situation and the avoidance of further stress (for example, through relapse into trauma as a consequence of legal proceedings).

Many forms of psychological protection depend on national rules and proceedings. The types of psychological protection that should always be considered include:

- Keeping the witness fully informed about what to expect in the courtroom
- Allowing expert counsellors to accompany the witness to court
- Utilizing judges, prosecutors and police who are specially trained and sensitive to the specific needs of witnesses
- Making available a separate waiting room for witnesses at courtrooms to avoid the witness being confronted by the defendant or the defendant's associate outside the courtroom

Protection from unfair treatment

It is essential to ensure that smuggled migrants who may be victims of crime are treated in a manner that respects their rights and their dignity. Because of the value of witnesses in

successfully prosecuting perpetrators, there is a danger that they will be regarded as tools in the process. That could lead to unfair treatment of witnesses, including repeated interrogation, invasive medical examination and incarceration. Fair treatment means treating witnesses primarily as individuals entitled to dignity and protection of their rights. The provision of adequate legal advice and services can assist in protecting witnesses from unfair treatment from an early stage, even before they have agreed to serve as witnesses.

In implementing witness protection measures, States must ensure that protection measures are implemented in a way that does not undermine the right of the defendant to a fair and open trial.

Article 24 of the Organized Crime Convention requires States to take appropriate measures within their means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings.

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in the training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 2 of the *Basic Training Manual* addresses the role of smugglers of migrants and smuggled migrants in investigations. It includes a section on smuggled migrants as witnesses.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Anti-human trafficking manual for criminal justice practitioners.* New York, 2009.

This document contains a module relevant to witness protection in trafficking cases that is of key relevance to witness protection in cases involving the smuggling of migrants. For more information about this module, visit www.unodc.org or contact the UNODC Anti-Human Trafficking and Migrant Smuggling unit via ahtmsu@unodc.org.

7.19 Ethnic, cultural, religious and linguistic considerations in using witnesses

When investigating and prosecuting cases involving the smuggling of migrants, it may be that many witnesses come from cultures that are different from that of the investigator.

This presents various challenges that investigators need to respond to; unless investigators have an understanding of the culture of the witness, they will not necessarily be able to build their trust or understand what assistance witnesses can offer to the case at hand. It must also be borne in mind that the circumstances that led the migrant to be smuggled may have resulted in him or her not trusting criminal justice systems.

Consider arranging team briefings of two or three independent sources. For instance, academics, interpreters and community representatives can offer insights into other cultures. Independent briefings may offer insights that are useful to investigators in their role. Having more than one independent briefing will enable investigators to cross-check any cultural advice they receive in order to dispel any cultural myths.

Finding appropriate interpreters

In many parts of the world, people who share the same language may have long-running inter-ethnic, cultural or religious tensions. Simply because a person speaks the same language or comes from the same country does not mean it would necessarily be appropriate to use them as interpreters with individual victims. Even where there is no inter-communal ill feeling, there may be simple misunderstandings because the interpreter and interviewee come from different social backgrounds or locations.

Suitability may be obvious in some cases, but not in others. It is helpful if investigators are aware of the potential points of tension among speakers of various languages and those from various cultures and can spot some of the more obvious problems. Tactful questioning of interpreters could also help to build a picture of the situations where it would and would not be appropriate to use them.

The following are some good practice suggestions on using interpreters:

- Where possible, interpreters should be accredited
- Interpreters should build trust with witnesses, but remain emotionally disconnected
- Meetings should include the police, the interpreter and the witness and should be tape-recorded (or extensive notes should be taken) so that officers can counter potential allegations of coaching or inducement of the witness
- An interpreter used during a suspect or witness interview cannot also provide interpreting services in a court hearing. An interpreter becomes a witness to the content of the interviews he or she has attended

- Cultural compatibility should be a priority. For instance, where an interpreter feels himself or herself to be superior to a witness that he or she is interpreting for and shows this by treating the individual in an aggressive, dismissive or arrogant way, this could undermine the trust and confidence necessary for the witness to provide a useful statement
- A dip sample of interpretations should be taken to ensure accuracy and consistency
- Interpreters should be assessed and changed if necessary to ensure that the right person is used in the right role. For instance, some interpreters are very good at building trust with witnesses in one-on-one situations, while others are more suited to interpreting in formal situations
- Where interpreters are needed over an extended period of time, for a prosecution trial, for instance, fixed-term contacts with trusted interpreters should be considered to ensure their availability

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

Module 2 of the *Basic Training Manual* addresses the role of smugglers of migrants and smuggled migrants in investigations and offers some advice on the use of interpreters.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *Anti-human trafficking manual for criminal justice practitioners.* New York, 2009.

Module 10 of this training manual concerns the use of interpreters, and includes guidelines for interpreters.

www.unodc.org/documents/human-trafficking/09-80667_module10_Ebook.pdf

7.20 Special considerations related to the protection of child witnesses

Before a child is asked to play a role in trial proceedings, formal assessment of the risks posed to the child and their family should be carried out. The assessment should consider whether there is a threat to the child both during legal proceedings and afterwards.

The harm posed to the child from having to repeat the story of their ordeal must also be considered.

The decision of whether or not to involve children in particular in legal proceedings (and if so, on what conditions) must be undertaken with due consideration for the possible threat from smugglers and their associations before, during and after the trial, and the risks created from procedures observed in the course of a trial or other proceedings. The consequences of a failure to successfully prosecute smugglers should be given particular consideration in connection with any potential threat to a child after the conclusion of a trial. The protection required for children participating in legal proceedings is different from the basic protection needed by all migrant children, because there is a real risk that the procedures used at trials and other proceedings may themselves expose children to harm.

Protection must be afforded:

- Before the trial: while waiting for the trial to take place or while giving pretrial testimony
- During the trial: including special in-court protection and child-friendly procedures
- After the trial: when a smuggler is released from custody or prison or where the smugglers' associates are at large

The identity and secure location of child witnesses should not be publicly disclosed; their privacy should be respected and protected as much as possible while taking into account the right of the accused to a fair trial. Witness protection can be expensive (providing witnesses with a new identity, relocation and resettlement). However, there are measures that are relatively cheap and effective, such as providing the child with a mobile phone or alarm to ring if he or she feels threatened.

International Association of Prosecutors and International Centre for Criminal Law

Reform and Criminal Justice Policy: Model Guidelines for the Effective Prosecution of Crimes against Children.

The International Association of Prosecutors compiled guidelines bringing together international standards to be observed for the treatment of children and standards to be observed by prosecutors. The guidelines cover general principles, case management and training, pretrial decisions, case preparation, trial procedures, sentencing, services to the child and multidisciplinary teams, international cooperation and assistance, and implementation and monitoring.

With regard to trial procedures, the model guidelines state that prosecutors should facilitate the development, availability and use of procedures to assist the child in giving testimony. Prosecutors should consult with the child and assist them in making an informed decision regarding the use of procedures and apply to the court to have procedures in place for the child during the trial. Procedures vary between jurisdictions, but may include:

- Allowing a videotaped statement of the child's evidence through the use of closed-circuit television
- Alternative arrangements for giving evidence, such as screens
- Allowing for the presence of a support person or advocate while the child is giving evidence
- Using intermediaries to assist child witnesses in giving evidence
- Prohibiting the defendant from cross-examining the child victim in person
- Objecting to aggressive or improper cross-examination by the defence
- Closing the court to the public
- Banning the media
- Reducing the formality of the courtroom, by measures such as removing advocates' robes

The complete Model Guidelines are available from: www.icclr.law.ubc.ca/Publications/Reports/Children2.PDF

Recommended resources

International Bureau for Children's Rights

For information on measures to protect children as witnesses, see also the website of the International Bureau for Children's Rights at: www.ibcr.org/.

United Nations Children's Fund

The United Nations Children's Fund offers various resources pertaining to children and their rights, including resources relevant to the Convention on the Rights of the Child.

www.unicef.org/

United Nations Children's Fund and United Nations Office on Drugs and Crime. *General Training Package on Child Victims and Witnesses of Crime.*

The United Nations Children's Fund and UNODC have collaborated to create a training package for practitioners who work with child victims and witnesses of crime.

The training package is available via www.unicef.org and www.unodc.org.

United Nations Office on Drugs and Crime and United Nations Children's Fund. *Justice in Matters involving Child Victims and Witnesses of Crime: Model Law and Related Commentary.*

UNODC and the United Nations Children's Fund have developed a Model Law to help countries in adapting their national legislation on justice in matters involving child victims and witnesses of crime. The Model Law is intended as a tool for drafting legal provisions concerning assistance to and the protection of child victims and witnesses of crime, particularly within the justice process. Designed to be adaptable to the needs of each State, the Model Law was drafted paying special attention to the provisions of the Economic and Social Council Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.

For more information, visit www.unodc.org/unodc/en/frontpage/unodc-and-unicef-partner-to-help-child-victims-.html.

To download the document, go to: www.unodc.org/documents/justice-and-prison-reform/UNODC_UNICEF_Model_Law_on_Children.pdf.

United Nations Office on Drugs and Crime. *Anti-human trafficking manual for criminal justice practitioners*. New York, 2009.

The manual was developed in line with the Trafficking in Persons Protocol supplementing the United Nations Convention against Transnational Organized Crime. Though the purpose of the manual is to support prevention of trafficking in persons, the lessons learned therein are applicable to smuggling of migrants.

Module 9 of this resource addresses interviewing child victims of trafficking; many of the same principles are applicable with respect to interviewing children who are smuggled migrants.

This module identifies a child as a person below the age of 18. It establishes that the underlying principle guiding interviews of children must be to conduct the interview with the best interests of the child in mind. The module adapts each of the five stages of the "PEACE" model to interviewing child victims.

For more information about the training manual, visit www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html.

International Association of Prosecutors and International Centre for Criminal Law. *Reform and Criminal Justice Policy: Model Guidelines for the Effective Prosecution of Crimes against Children.*

www.icclr.law.ubc.ca/Publications/Reports/Children2.PDF

7.21 Responding to smuggling of migrants by sea[6]

Articles 8 and 9 of the Smuggling of Migrants Protocol specifically address the issue of smuggling of migrants by sea and the responses required of States.

Smuggling of Migrants Protocol

Article 8. Measures against the smuggling of migrants by sea

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, inter alia:

(a) To board the vessel;

(b) To search the vessel; and

(c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve

[6] For some insight into how smuggling of migrants by sea can occur, see Tool 2, section 8.

imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9. Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

(a) Ensure the safety and humane treatment of the persons on board;

(b) Take due account of the need not to endanger the security of the vessel or its cargo;

(c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;

(d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

The main focus of article 8 is to facilitate law enforcement action in relation to smuggling of migrants involving the vessels of other States parties. The enactment of legislation providing for enforcement powers in respect of foreign flag vessels may therefore be necessary.

Issues to be addressed in such legislation include the provision of powers to search and obtain information, powers of arrest and seizure, the use of reasonable force, the production of evidence of authority and the provision of appropriate legal protection for the officers involved.

Drafters should note that the meaning of the phrase "engaged in the smuggling of migrants by sea" includes both direct and indirect engagement, including cases where a mother ship has already transferred migrants to smaller vessels for landing and no longer has any on board or has picked up migrants while at sea for the purposes of smuggling them. This would not include a vessel that had simply rescued migrants who were being smuggled by another vessel.

The need to rescue

The focus of article 8 on suppression of a criminal activity should not lead law enforcement officers to overlook the duty established under maritime law and custom to rescue those in peril at sea. Vessels used for smuggling may be confiscated if apprehended and, for that reason, smugglers often use dilapidated vessels. In some cases, when such vessels are encountered at sea, they are overloaded with migrants and in imminent danger of sinking. Legislation should be drafted and implemented to ensure that officials are aware that the duty to effect a rescue has priority in such circumstances and that where there is evidence of peril at sea, vessels should be boarded whether there is a suspicion of smuggling or not.

Domestic powers and safeguards, if needed, should consider the safeguards set out in article 9 and the interests of maritime rescue and safety. They should not, however, limit the duty or power of authorities to act in cases where lives or safety may be at risk or in cases where there was reason to believe migrants or other persons were being trafficked or held on board against their will.

Appropriate exercising authority

The Protocol does not limit the class or status of officials who can exercise maritime search powers to warships and military aircraft, leaving it open to legislatures to extend such powers to any official or agency with appropriate law enforcement activities. It should be noted, however, that any boats, ships or aircraft used must be clearly marked and identifiable as being on government service and authorized to that effect (article 9, para. 4).

Given the risks and difficulty associated with boarding and searching vessels at sea, legislatures may also wish to consider limiting the authority to exercise powers created pursuant to the Protocol to a relatively small number of officials or officers who have the necessary training, competence and equipment.

Designation of a central authority

Article 8, paragraph 6, requires that each State party designate a central authority to deal with maritime cases, which may require legislative action establishing an authority and providing for the necessary powers, in particular the power to authorize another State party to take action against vessels flying its flag. In determining the appropriate location for their designated authority, States parties should consider factors such as ease of access to the national shipping registry in order to provide confirmation of registry, ease of coordination with other domestic agencies, including maritime law enforcement authorities, and the existence of arrangements for the conduct of business on a round-the-clock basis. The

designated authority should also be responsible for outgoing requests to other States parties. It should therefore be able to receive requests from domestic authorities—customs, police and other law enforcement agencies—and be in a position to assist in transmission to foreign States.

Article 8, paragraph 6, further requires States parties to notify their designated authority to the Secretary-General to permit a list of contact points to be maintained and circulated to all States parties. Governments responding to this should consider providing essential contact information (addresses, telephone and facsimile numbers, hours of operation and the language or languages in which requests can be processed).

International Maritime Organization

Persons in distress at sea

In May 2004, the Maritime Safety Committee adopted amendments to the 1974 International Convention for the Safety of Life at Sea, and the International Convention on Maritime Search and Rescue, 1979, concerning the treatment of persons rescued at sea, and/or asylum seekers, refugees and stowaways. The amendments were made in response to a review of safety measures and procedures for the treatment of people rescued at sea adopted by the International Maritime Organization Assembly.

The amendments, which entered into force on 1 July 2006, include:

> International Convention for the Safety of Life at Sea: chapter V (Safety of navigation)—to add a definition of search and rescue services; to set an obligation to provide assistance, regardless of nationality or status of persons in distress, and mandate coordination and cooperation between States to assist the ship's master in delivering persons rescued at sea to a place of safety; and to add a new regulation on master's discretion.
>
> International Convention on Maritime Search and Rescue: Annex to the Convention—addition of a new paragraph in chapter 2 (Organization and coordination) relating to definition of persons in distress, new paragraphs in chapter 3 (Cooperation between States) relating to assistance to the master in delivering persons rescued at sea to a place of safety and a new paragraph in chapter 4 (Operating procedures) relating to rescue coordination centres initiating the process of identifying the most appropriate places for disembarking persons found in distress at sea.

The Maritime Safety Committee also adopted related Guidelines on the treatment of persons rescued at sea. The purpose of the Guidelines is to provide guidance to Governments and to shipmasters with regard to humanitarian obligations and obligations under the relevant international law relating to treatment of persons rescued at sea. The obligation of the master to render assistance should complement the corresponding obligation of International Maritime Organization members to coordinate and cooperate in relieving the master of the responsibility to provide follow-up care of survivors and to deliver the persons retrieved at sea to a place of safety. The Guidelines are intended to help Governments and masters better understand their obligations under international law and provide helpful guidance with regard to carrying out these obligations.

For more information on this regime, see www.imo.org/Newsroom/mainframe.asp?topic_id=1396.

Promising practices

Sicilian trawler and the Office of the United Nations High Commissioner for Refugees help in the rescue of 27 Somalis

Sicilian fishing boat captain Gaspare Marrone was fishing with his crew south of Lampedusa Island, when they spotted a boat in distress. The Sicilians started bringing the 30 Somali passengers on board, but in the process the boat capsized and three people were unaccounted for. Nicola Asaro, another Sicilian captain fishing in the area, called Laura Boldrini, Senior Regional Public Information Officer of the Office of the United Nations High Commissioner for Refugees, by satellite phone and told her that Marrone and his crew were trying to mount a rescue operation but were having difficulties. Boldrini passed the information (including coordinates of Marrone's fishing boat) to the Italian coastguard and navy, which sent help. Marrone detached his boat from the tuna pen it was towing and rescued 20 men and 7 women. The migrants were taken to Porto Empedocle in Sicily after they were moved onto a navy vessel.

Both Asaro and Marrone were presented with the Per Mare Award for their efforts. The Per Mare Award was established in response to a trend whereby boat people in distress in the Mediterranean are often ignored by commercial vessels, the crews of which fear facing investigations for their role in illegal migration.

Australian presence in the Torres Straight

Australia has no land borders. This means that all arrivals to Australia are via sea or air. Particular challenges are posed by the Torres Strait islands, where border management objectives must be balanced by the challenges of not interfering with the movements of traditional inhabitants of the islands.

The Torres Strait lies off the far north-eastern tip of Australia. It is a passage 150 kilometres wide between Cape York Peninsula and the southwest coast of Papua New Guinea. It comprises a series of 100 islands, reefs and cays, approximately 22 of which are inhabited by about 8,000 people. Thirteen of the inhabited islands are located within the Protected Zone. Thursday Island, which is about 25 kilometres from the Australian mainland, is the government administrative centre for the Torres Strait.

The department's North Queensland District has full-time officers based on Thursday Island who provide a full range of immigration services, including visas issue, citizenship and residency applications. The officers also manage a network of Movement Monitoring Officers, monitoring issues arising from the Torres Strait Treaty and the traditional flow of people in the Torres Strait. They make regular visits to the islands and participate in treaty discussions.

The officers are based on the 14 inhabited islands and play an important role in border protection. The network of officers operates as a dispersed group, integrated into local communities, providing considerable coverage throughout the Torres Strait. Not only are they experts in their local communities, but they also act as a conduit for wider community information. The officers work closely with island chairpersons and their community to manage the traditional flow of people and report on any other movement in the region.

The Torres Strait Treaty (Miscellaneous Amendments) Act 1984 sets out the agreed position of Australia and Papua New Guinea in relation to sovereignty and maritime boundaries in

the Torres Strait. The islands over which Australia has sovereignty continue to be regarded as part of Queensland. Article 16 of the treaty seeks to ensure that both signatories in the administration of their respective immigration, customs, quarantine and health laws do not "prevent or hinder free movement or performance of traditional activities in and in the vicinity of the Protected Zone by the traditional inhabitants of the other party".

Source: www.immi.gov.au/media/fact-sheets/72torres.htm

The United States Coast Guard

The United States Coast Guard's overarching strategy is to, through a layered security architecture, "push out our borders". The National Strategy for Maritime Security emphasizes the need to patrol, monitor and exert control over maritime borders and maritime approaches. It goes on to emphasize that at-sea presence reassures United States citizens, deters adversaries and lawbreakers, provides better mobile surveillance coverage, adds to the warning time, allows seizing the initiative to influence events at a distance and facilitates the capability to surprise and engage adversaries. The Coast Guard operates in every maritime layer in anticipation of, or in response to, changing threats, adversary tactics and operational conditions. During the course of routine operations, as well as specified security missions, Coast Guard cutters and aircraft operate in the offshore waters of the Atlantic and the Pacific and in the Caribbean Sea to provide Maritime Domain Awareness, command and control and capability to respond to maritime threats.

www.uscg.mil/

Recommended resources

For more on cooperation with respect to smuggling of migrants by sea, see Tool 6, section 11.

Commission of the European Communities. *Communication from the Commission to the Council, Reinforcing the Management of the European Union's Southern Maritime Borders.*

The Commission of the European Communities released a Communication from the Commission to the Council, reinforcing the management of the European Union's Southern Maritime Borders.

The communication stresses the need for all States to ratify the Organized Crime Convention and the Smuggling of Migrants Protocol, and sets out strategies for ensuring that the management of external sea borders is approached cooperatively.

This communication is available from: www.unhcr.org/refworld/category,POLICY,EUCOMMISSION,,,4693a4fd2,0.html.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its Protocols. The *Guides* have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations Office on Drugs and Crime. *Model Law against Smuggling of Migrants.*

The *Model Law against Smuggling of Migrants* has been developed by UNODC to assist States in implementing the provisions contained in the Smuggling of Migrants Protocol supplementing the Organized Crime Convention. It aims to facilitate the review and amendment of existing legislation, as well as the adoption of new legislation. The *Model Law* covers not only the criminalization of smuggling of migrants and related offences, but also the different aspects of assistance to victims, as well as establishing cooperation between different State authorities and non-governmental organizations. Each provision is accompanied by a detailed commentary, providing several options for legislators, as appropriate, and legal sources and examples.

The *Model Law* is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

International Maritime Organization and the Office of the United Nations High Commissioner for Refugees. *Rescue at Sea: A Guide to Principles and Practices as Applied to Migrants and Refugees.*

The leaflet, jointly prepared by the International Maritime Organization and the Office of the United Nations High Commissioner for Refugees, is intended for shipmasters, ship owners, government authorities, insurance companies and any other interested parties involved in rescue at sea.

The leaflet provides guidance on relevant legal provisions and on practical procedures to ensure the prompt disembarkation of survivors of rescue operations and measures to meet their specific needs, particularly in the case of refugees and asylum-seekers.

The pamphlet is available in several languages from www.imo.org.

To see the principles of the International Maritime Organization related to administrative procedures for disembarking persons at sea, visit: www.imo.org/includes/blastData.asp/doc_id=11064/194.pdf.

7.22 Detention of smuggled migrants

Article 16, paragraph 5, of the Smuggling of Migrants Protocol reads:

> "In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations,[7] where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers."

When foreign nationals are arrested or detained, article 36 of the Vienna Convention on Consular Relations 1963 provides that, if requested, the authorities of the receiving State must notify the Consulate of the sending State without delay that its national has been deprived of his or her liberty. Any communication shall be facilitated and consular access to the detainee shall be granted.

http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

The following guidelines relate to conditions of detention:

- Persons should only be detained in officially recognized places of detention
- Detainees should be kept in as humane facilities as possible, designed to accommodate human beings, and be provided with adequate food, water, shelter, clothing, medical services, exercise and personal hygiene items
- Untried prisoners must, except in exceptional circumstances, be kept segregated from convicted persons and must be subject to separate treatment. Women must be separated from men, and children from adults
- Detained persons should be allowed to inform family of detention, and should be given reasonable facilities for communicating with legal representatives
- Religious and moral beliefs of detainees must be respected
- Persons arrested or detained without charge must be accorded the same protections and facilities as pretrial prisoners and those awaiting trial

Recommended resources

General Assembly resolution 43/173, annex. *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.*

www.un.org/documents/ga/res/43/a43r173.htm

[7] United Nations *Treaty Series,* vol. 596, No. 8638.

The resource is also contained in the UNODC *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*.

United Nations Office on Drugs and Crime. *Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice*. New York, 2006.

The Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice contains internationally recognized normative principles and standards in crime prevention and criminal justice. The Compendium consists of four key sections:

- Standards and norms related primarily to persons in custody, non-custodial sanctions, juvenile justice and restorative justice
- Standards and norms related primarily to legal, institutional and practical arrangements for international cooperation
- Standards and norms related primarily to crime prevention and victim issues
- Standards and norms related primarily to good governance, the independence of the judiciary and the integrity of criminal justice personnel

www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html

7.23 Return of smuggled migrants

The following excerpt is from the Smuggling of Migrants Protocol:

Smuggling of Migrants Protocol

Article 18. Return of smuggled migrants

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.

2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.

3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

In article 18, each State party is required:

- To accept without undue delay and facilitate the return of a smuggled person who is a national of the State party or has the right of permanent residence (para. 1)
- To verify without unreasonable delay whether a smuggled person who is a national or has the right of permanent residence and issue the travel documents required for re-entry (paras. 3 and 4)
- To carry out the return in an orderly manner with due regard for the safety and dignity of the person being returned (para. 5)

States parties are required to cooperate in the identification or determination of status of their nationals and residents.

States parties are also required to cooperate in ("facilitate and accept") the return of nationals and to consider cooperation in the return of those with some rights of residency without actual citizenship, including by the issuance of documents needed to allow the travel of such persons back from countries to which they have been smuggled. In most States, conformity with these requirements would involve primarily the issuance of administrative instructions to the appropriate officials and ensuring that the necessary resources are available to permit them to provide the necessary assistance.

Legislative amendments might be required in some States to ensure that officials are required to act (or, in appropriate cases, to consider acting) in response to requests and that they have the necessary legal authority to issue visas or other travel documents when a national or resident is to be returned. In drafting such legislation, officials should bear in mind that any obligations in international law governing the rights or treatment of smuggled migrants, including those applicable to asylum-seekers, are not affected by the Protocol or the fact that the State concerned has or will become a party to it (art. 18, para. 8, of the Protocol and the interpretative notes (A/55/383/Add.1), para. 116). Legislatures may wish also to consult the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families,[8] which provides for measures that go beyond those set out in the Protocol. (In particular, article 67 calls for cooperation "with a view to promoting adequate economic conditions for … resettlement and to facilitating … durable social and cultural reintegration in the State of origin".)

The requirements to accept the return of nationals and to consider accepting the return of those with some right of residency turn on the status of those individuals at the time of return. Paragraph 111 of the interpretative notes should be taken into account:

> "The travaux préparatoires should indicate that this article is based on the understanding that States Parties would not deprive persons of their nationality contrary to international law, thereby rendering them stateless."

The notes also indicate that return should not be carried out until any relevant nationality or residency status has been ascertained (A/55/383/Add.1, para. 113).

Where feasible, States should also consider training for officials likely to be involved in the return of smuggled migrants, bearing in mind the requirement of article 16 to ensure that

[8] United Nations *Treaty Series,* vol. 2220, No. 39481.

basic rights are preserved and respected and the requirement of article 18, paragraph 5, that returns must involve any measures necessary to ensure that they are carried out in an orderly manner and with due regard for the safety and dignity of the person.

The following excerpt is from Human Rights Committee General Comment 27 (CCPR/C/21/Rev.1/Add.9), paragraph 21 (on return of migrants):

> 21. In no case may a person be arbitrarily deprived of the right to enter his or her own country. The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances. The Committee considers that there are few, if any, circumstances in which deprivation of the right to enter one's own country could be reasonable. A State party must not, by stripping a person of nationality or by expelling an individual to a third country, arbitrarily prevent this person from returning to his or her own country.

Promising practices

Back to Armenia (Centre for Assistance to Migrants)

Back to Armenia is a multilingual website for persons who want to or have to return to Armenia.

The website is a product of a project entitled "Support to migration policy development and relevant capacity-building in Armenia", which pursues the goals of:

- Preventing illegal migration
- Assisting in the increase of efficiency of the return and reintegration process
- Bringing migrant policy and legislation into conformity with universally recognized norms and principles of migration law

The objectives of the programme are:

- To increase the level of public awareness of illegal migration and the risks and consequences thereof
- To present the current Armenian situation and opportunities to Armenian citizens living abroad, with a view to promoting their return
- To strengthen institutional, consultative and technical capacities of the Migration Agency of the Republic of Armenia, Ministry of Territorial Administration
- To establish a system of communication with the returning migrants that operates using a telephone hotline
- To ensure an effective dialogue between the organizations developing and implementing the migration policy and the relevant public structures
- To promote elaboration of a migration policy that will be consistent with international law and will take into account the current social-economic situation in Armenia
- To establish a higher level of development in cooperation with Government bodies and non-governmental structures

There are three components of this programme:

- Raising public awareness
- Capacity-building for the institutions assisting with return and reintegration
- Establishing dialogue on policy

In relation to the second of these components, a centre for assistance to migrants was set up at the Ministry of Territorial Administration, which can provide people that have left Armenia with comprehensive information on any migration-related problem they may have. The Centre is in direct contact with other Government bodies and can therefore provide responses to problems after consultation with competent authorities.

The Back to Armenia website is available in Armenian, English and Russian.

www.backtoarmenia.am

Bali Process Returns Project

The main objectives of the Bali Process Returns Project were:

- To examine policies and activities of Governments when they return people who have no legal authority to remain in their territory to another country
- To collect and disseminate information that may assist Governments when they develop relevant policies, draft bilateral agreements and undertake returns

The first phase of the project was a survey of return policies and practices in Bali Process countries, which was concluded in March 2003. The second phase was a workshop (hosted by Australia as Coordinator of the Returns Project) held jointly with the Budapest Process in Perth, Australia in May 2004. The third phase is the establishment of a repository of information related to returns on the website (www.baliprocess.net), including a collection of model paragraphs for use in drafting bilateral agreements.

The Bali Process website provides information about relevant international and regional instruments, as well as various publications and agreements concerning return.

www.baliprocess.net/index.asp?PageID=2145831425

Recommended resources

Practical tools

Office of the United Nations High Commissioner for Refugees. Geneva, 2004.

The Handbook for Repatriation and Reintegration Activities is a guide for staff of the Office of the United Nations High Commissioner for Refugees and partner staff in the field to plan, implement, monitor and evaluate repatriation and reintegration activities. The Handbook should be used in conjunction with the Office of the United Nations High Commissioner for Refugees *Handbook on Voluntary Repatriation* (issued in 1996 and under revision), which addresses repatriation issues in more detail.

The *Handbook* is divided into three parts:

Part A: Understanding the context: where repatriation and reintegration fit

Part B: How to plan, implement, monitor and evaluate repatriation and reintegration operations

Part C: Institutional support mechanisms

www.unhcr.org/411786694.html

Council of Europe. *Forced Return: 20 Guidelines adopted by the Council of Ministers* (2005)

National authorities in charge of elaborating or implementing the effective return of irregular migrants are often faced with sensitive and complex issues: how to ensure that no individual is sent back to a place where his or her life or security is at risk; under what conditions should detention pending removal be allowed; what information can be provided to the State of origin. This type of issue was, to a large extent, addressed by the Committee of Ministers of the Council of Europe when, on 4 May 2005, it adopted 20 guidelines on forced return. These guidelines offer a systematic overview of the standards developed in this field by the different bodies within the Council of Europe.

The 20 guidelines on forced return serve as a practical guide to be used both by Government officials and by all those directly or indirectly involved in return operations in Europe.

http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=1963

Council of Europe. *The Return of Rejected Asylum Seekers: Recommendation No. R (99) 12 and Explanatory Memorandum* (2000)

The aim of the recommendation is to facilitate the return of rejected asylum-seekers and to provide member States with certain guidelines when they return rejected asylum-seekers from their territory to the country of which such persons are nationals or non-national former habitual residents (their country of origin).

http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=792

Legal instruments

There are several international legal instruments that are relevant to the return of smuggled migrants. There are several such instruments provided in Tool 3, section 4. See also:

Convention relating to the Status of Refugees[a]

www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf

[a]United Nations *Treaty Series*, vol.189, No. 2545.

Declaration on Territorial Asylum (General Assembly resolution 2312 (XXII)

www.unhcr.org/refworld/docid/3b00f05a2c.html

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment[b]

www.hrweb.org/legal/cat.html

International Covenant on Civil and Political Rights[c]

http://portal.unesco.org/ci/en/files/26137/12047261163ICCPR.pdf/ICCPR.pdf

International Convention on the Elimination of All Forms of Racial Discrimination[d]

www.hrcr.org/docs/CERD/cerd.html

Convention on the Rights of the Child[e]

www2.ohchr.org/english/law/crc.htm

Universal Declaration of Human Rights (General Assembly resolution 217A (III))

www.un.org/en/documents/udhr/

International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families[f]

www2.ohchr.org/english/law/cmw.htm

Convention relating to the Status of Stateless Persons[g]

www2.ohchr.org/english/law/stateless.htm

Chicago Convention on International Civil Aviation

http://avisupser.dgrsolutions.com/airlaws/chicago1944_e.html

[b] Ibid., vol. 1465, No. 24841.
[c] Ibid., vol. 999, No. 14668.
[d] Ibid., vol. 660, No. 9464.
[e] Ibid., vol. 1577, No. 27531.
[f] Ibid., vol. 2220, No. 39481.
[g] Ibid., vol. 360, No. 5158.

Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime[h]

www.unodc.org/unodc/en/treaties/CTOC/index.html

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

www.unodc.org/unodc/en/treaties/CTOC/index.html

Policy guidance

European Council on Refugees and Exiles

The European Council on Refugees and Exiles is a pan-European network of 69 refugee-assisting non-governmental organizations that promotes a humane and generous European asylum policy.

Together with our members, we promote the protection and integration of asylum-seekers, refugees and internally displaced persons based on values of human dignity, human rights and an ethic of solidarity.

The Council has written a policy paper on the issue of return, available from www.ecre.org/topics/return

Human Rights Watch. *Common principles on removal of irregular migrants and rejected asylum-seekers*, 31 August 2005, available from www.hrw.org/en/news/2005/08/31 common-principles-removal-irregular-migrants-and-rejected-asylum-seekers

International Centre for Migration Policy Development. *Prague Ministerial Meeting Recommendations*

The Conference of Ministers on the Prevention of Illegal Migration held in the context of the Budapest Process (The Prague Ministerial Meeting) on 14 and 15 October 1997 resulted in several recommendations. Recommendations 24-38, concerning the return of migrants, read as follows:

Return to countries of origin and obligation to readmit

24. Recommend that participating States as far as possible give due consideration to the primary option of returning persons concerned directly to their countries of origin, as this in most cases constitutes the appropriate solution;

25. Recommend that participating States cooperate in demanding that the authorities of countries of origin extend their services in ascertaining the identity of undocumented illegal migrants who seemingly are their citizens, and in responding to such readmission requests within reasonable time limits;

[h] Ibid., vol. 2237, No. 39574.

26. Recommend that participating States also cooperate in demanding, when the citizenship has been recognized or is evident, that the country of origin issues a consular laissez-passer or a document which entitles for readmission at the shortest possible delay, and within the time limits given by national rules for detention on administrative grounds which are valid in the requesting State;

27. Recommend that participating States identify the countries which cause problems in terms of readmitting their own citizens and that they consider taking joint measures vis-à-vis these countries;

28. Recommend that participating States facilitate the transit of aliens who are being returned to their country of origin, assisting inter alia when transport problems arise and in providing escort, under cost-sharing arrangements, as appropriate;

29. Recommend that participating States agree upon a format for a standard document, similar to the one agreed upon among EU States, to serve as a consular laissez-passer, so as to facilitate transfer to the country of destination;

30. Recommend that the authorities of participating States cooperate with those of the countries of origin with a view to facilitating the readmission of persons concerned in their country;

31. Recommend that participating States cooperate in demanding that countries of destination and of origin cooperate in facilitating voluntary return;

32. Recommend that interested States make use of national programmes and/or the services of IOM in enhancing voluntary return directly to the country of origin;

Readmission agreements

33. Recommend that participating States continue their efforts to conclude readmission agreements, which should contain clauses on nationals, on citizens of third countries, on transit for the sake of return and on the protection of personal data;

34. Recommend that participating States apply a standard format for readmission agreements, taking into account the specimen bilateral readmission agreement of the European Union or any other model acceptable to all participating States;

35. Recommend that States make use of the most flexible and rapid forms of readmission, i.e. readmission on the basis of a minimum of formalities between competent authorities, determined contact points, standard forms in two languages, simplified recognition of proofs, as well as other measures contributing to the efficiency of the implementation of agreements and to reducing the time in dealing with cases;

36. Recommend that when participating States consider the abolishment of visa obligations with regard to another State, duly taking into account also the interest of other participating States, they conclude a readmission agreement with the State concerned, as appropriate;

37. Recommend that readmission clauses, relating to both nationals and third country citizens, be inserted in general cooperation agreements with countries which are sources of irregular migration, such as agreements relating to economic or political cooperation;

38. Recommend that the Inter-governmental Consultations continue to maintain an inventory of readmission instruments concluded by European States.

To download all recommendations, visit: www.icmpd.org/846.html?&tx_icmpd_pi2%5Bdocument%5D=434&cHash=90aa64d1f1

Commission of the European Communities. *Communication from the Commission on Policy Priorities in the Fight against Illegal Immigration of Third-Country Nationals.*

From the *Communication:*

g. Return policy

42. Return, in full respect of fundamental rights, remains a cornerstone of European Union migration policy. An effective return policy is key in ensuring public support for elements such as legal migration and asylum.

43. The conclusion of readmission agreements will also remain a priority. Ongoing negotiations should be completed and new negotiating mandates be adopted, starting with the Western Balkan countries and, as soon as possible, with selected Neighbourhood countries.

44. The proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals is currently under discussion in the European Parliament and Council. It provides for common rules concerning return, use of coercive measures, temporary custody and re-entry.

45. With the future Return Fund, the Community will be endowed with an instrument to support and encourage the efforts made by Member States to improve the management of return in all its dimensions, including enhanced cooperation, which will further increase solidarity between them.

46. The organisation of joint return flights is supported through three elements; Council Decision 2004/573/EC sets out a legal basis for such flights; return preparatory actions and the future return fund provide in financial terms; and communication support provided by the ICONet web-based network allows for necessary information exchange between Member States. These constitute the

current basis for cooperation. Frontex will provide the necessary assistance for organising and coordinating the joint return operations of Member States. Furthermore, Council Directive 2003/110/EC strengthens cooperation among Member States in cases of transit by air. The Commission will consider further proposals building on the 2003 Council conclusions encouraging Member States to facilitate short-term transit by land or sea.

47. Lack of documentation remains an obstacle to the effective return of illegal migrants, in particular as the European Union travel document is still not accepted by a large number of third countries. The current European Union travel document is based on a 1994 Council recommendation, and the Council adopted conclusions in June 2004 on its re-examination. Frontex is to undertake work on the identification of best practice on the acquisition of travel documents and the return of third country nationals.

48. Common standards for the training of officers responsible for return should also be established, for instance through the elaboration of a common training manual and European Union-wide standardised and specialised seminars.

http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!DocNumber&lg=en&type_doc=COMfinal&an_doc=2006&nu_doc=402

"Proposal for a comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union", *Official Journal of the European Communities,* C 142, 14 June 2002.

The *Journal* notes in its part II, section E, on readmission and return policy, that further action must be taken with respect to establishing a return policy. It also sets out some practical measures for implementation, concerning:

I. Establishing a joint approach/cooperation between the Member States for the purposes of implementing return measures

II. Readmission agreements with third countries

III. Transit of returnees

IV. Common standards for return procedures

To read the full proposal, see:

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2002:142:0023:0036:EN:PDF

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Toolkit to Combat Smuggling of Migrants

Tool 8

Protection and assistance measures

8

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Toolkit to Combat Smuggling of Migrants

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Contents

Overview 1

8.1 Obligations of States to protect and assist 3

8.2 Protection, assistance and human rights 6

8.3 Understanding the psychological impact of smuggling of migrants on the migrant 9

8.4 Rescue at sea 12

8.5 Referral mechanisms 16

8.6 Health and medical assistance 21

8.7 Responses to the vulnerability to HIV/AIDS of smuggled migrants or persons vulnerable to being smuggled 25

8.8 Access to information and legal representation 27

8.9 Human rights of smuggled migrants 30

8.10 Protection of smuggled migrants who are refugees 38

8.11 Non-refoulement 42

Overview

Tool 8 provides an overview of protection and assistance measures that States are required to afford to smuggled migrants.

8.1 offers an overview of the obligation to protect and assist as prescribed in the Smuggling of Migrants Protocol.

8.2 places these obligations in a broader context with respect to commensurate human rights considerations.

8.3 discusses the psychological impact that the smuggling process may have on a migrant, including trauma.

8.4 deals specifically with the issues of rescue at sea as provided for in article 8 of the Smuggling of Migrants Protocol.

8.5 offers an example of a referral mechanism to address mixed migration flows.

8.6 and 8.7 offer specific guidance on medical and health assistance.

8.8 highlights the need for migrants to access information and legal representation, and the advantage that this offers to the criminal justice response to the smuggling of migrants.

8.9 provides an overview of the human rights of smuggled migrants and recommends several relevant resources.

8.10 and 8.11 explain the protection that must be afforded to smuggled migrants who are refugees and the principle of non-refoulement.

8.1 Obligations of States to protect and assist

The following is an excerpt from the Smuggling of Migrants Protocol:

Smuggling of Migrants Protocol

Article 16. Protection and assistance measures

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.

4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

*United Nations, *Treaty Series*, vol. 596, No. 8638.

The Protocol contains safeguard requirements in two major areas:

- The rights, legal status and safety of smuggled migrants and illegal residents, including those who are also asylum-seekers
- The rights and interests of States and ship owners under maritime law

Article 16 is a response to concerns about the basic safety, security and human rights of persons who have been the object of one of the major offences established in accordance with the Protocol, including migrants who have been smuggled and those who may have entered legally, but whose subsequent illegal residence has been made possible by an organized criminal group.

The provisions are intended to set an appropriate standard of conduct for officials who deal with smuggled migrants and illegal residents and to deter conduct on the part of offenders that involves danger or degradation to the migrants.

Each State party is required to take all appropriate measures:

- To protect smuggled persons from death, torture or other cruel, inhuman or degrading treatment or punishment (article 16, paragraph 1) and violence (article 16, paragraph 2)
- To provide appropriate assistance to persons endangered by smugglers, taking into account the special needs of women and children (article 16, paragraphs 3 and 4)

Each State party is also required:

- To comply with its obligation under the Vienna Convention on Consular Relations to inform the person of the notification and communication obligations under that Convention (article 16, paragraph 5)
- To accept without undue delay and facilitate the return of a smuggled person who is a national of the State party or has the right of permanent residence (article 18, paragraph 1)
- To verify without unreasonable delay whether a smuggled person who is a national or has the right of permanent residence and issue the travel documents required for re-entry (article 18, paragraphs 3 and 4)
- To carry out the return in an orderly manner with due regard for the safety and dignity of the person being returned (article 18, paragraph 5)
- When carrying out measures aboard vessels, States parties shall:
  - Ensure the safety and humane treatment of passengers (article 9, paragraph 1)
  - Compensate the vessel for any loss or damage where enforcement grounds for measures against the vessel prove to be unfounded (article 9, paragraph 2)

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The *Guides* lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The *Guides* have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations. *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Organized Crime and the Protocols thereto* (Sales No. E.06.V.5).

The publication of the *Travaux Préparatoires* (official records) of the negotiations of the *United Nations Convention against Organized Crime and the Protocols thereto* is intended to provide a better, in-depth understanding of the Convention and its Protocols. The publication tracks the progress of negotiations in the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, established by the General Assembly by its resolution 53/111.

www.unodc.org/unodc/en/treaties/CTOC/travaux-preparatoires.html

8.2 Protection, assistance and human rights

Human rights considerations

In addition to the protection and assistance requirements prescribed in article 16, the Protocol requests the State party to apply such rights as are established in article 16, including general basic human rights (article 16, paragraphs 1 and 2, and article 19, paragraph 2) and the right to consular assistance (article 16, paragraph 5). Article 16, paragraph 3 does not create a new right, but does establish a new obligation in that it requires States parties to provide basic assistance to migrants and illegal residents in cases where their lives or safety have been endangered by reason of an offence established in accordance with the Protocol. Particular attention is paid to ensuring that rights established by international humanitarian law, which primarily concern migrants or illegal residents who are also asylum-seekers, are not affected (article 19, paragraph 1).

Article 18, which sets out conditions for the return of smuggled migrants and illegal residents to their countries of origin, also does not require the creation of any substantive or procedural rights for such persons, but paragraph 5 of that article requires measures to ensure that such return occurs in an orderly manner and with due regard for the safety and dignity of the person.

More on human rights considerations with respect to return of smuggled migrants is contained in Tool 7, section 23.

Promising practices

Mixed Migration Task Force, Somalia

The Mixed Migration Task Force was established in April 2007 with the Office of the United Nations High Commissioner for Refugees and the International Organization for Migration acting as co-chairs, under the auspices of the Inter-Agency Standing Committee's Protection Cluster. The purpose of the Task Force is to develop a rights-based strategy to ensure a comprehensive coordinated response to protection and humanitarian needs of migrants and asylum-seekers transiting through Somalia. The Task Force reports to the United Nations Country Team and the Inter-Agency Standing Committee, through the protection cluster. Task Force membership includes the Office for the Coordination of Humanitarian Affairs, the United Nations Development Programme, the United Nations Children's Fund, the World Food Programme, the Danish Refugee Council and the Norwegian Refugee Council.

Objectives

A. Develop an inter-agency strategic framework for effective humanitarian interventions with respect to Mixed Migration in Somalia, and to guide the United Nations Country

> Team and Inter-Agency Standing Committee in Somalia and other stakeholders in a comprehensive operational response to mixed migration flow.
>
> B. Define an advocacy and capacity-building strategy focusing on enhancing local awareness and local capacity to mitigate the consequences of mixed migration in Somalia.
>
> C. Strengthen inter-country initiatives and promote a regional approach to mixed migration, notably through information sharing and joint planning, involving all relevant stakeholders.

http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1119266

Permanent Council of the Organization of American States. *Working Group to prepare an Inter-American Program for the Promotion and Protection of the Human Rights of Migrants Including Migrant Workers and Their Families*

Inter-American Program for the Promotion and Protection of the Human Rights of Migrants, including Migrant Workers and Their Families:

> Taking into Account The Plan of Action of the First Summit of the Americas, adopted in December 1994 in Miami, Florida, United States of America; the Declaration of the Second Summit of the Americas, held in Santiago, Chile, in April 1998; and, more particularly, the Plan of Action of the Third Summit of the Americas, adopted in Quebec City, Canada, in April 2001, where the Heads of State and Government stated that they would "[e]stablish an inter-American program within the Organization of American States for the promotion and protection of the human rights of migrants, including migrant workers and their families, taking into account the activities of the Inter-American Commission on Human Rights and supporting the work of the Inter-American Commission on Human Rights Special Rapporteur on Migrant Workers and the United Nations Special Rapporteur on Migration"
>
> One of the specific objectives of the program is prevention and technical cooperation in the fight against the smuggling of migrants, and investigation and criminal prosecution of smugglers of migrants.

www.oas.org/consejo/CAJP/Migrant_default.asp

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training manual address the concept and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions throughout the world.

Module 9 addresses human rights considerations in responding to the smuggling of migrants.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

Global Migration Group. *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights.* October 2008.

This guide is the collaborative result of the 14 members of the Global Migration Group: the International Labour Organization, the International Organization for Migration, the Office of the United Nations High Commissioner for Human Rights, the United Nations Conference on Trade and Development, the Department of Economic and Social Affairs of the Secretariat, the United Nations Development Programme, the United Nations Educational, Scientific and Cultural Organization, the United Nations Population Fund, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Institute for Training and Research, the United Nations Office on Drugs and Crime and the World Bank.

Chapter II describes categories of migrants and provides a regional overview of migration.

www.globalmigrationgroup.org

Platform for International Cooperation on Undocumented Migrants. *Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework.* 2007.

All across Europe, and in different regions throughout the world, a growing number of non-governmental organizations, local authorities, professionals from diverse fields, as well as undocumented migrants uphold the principle that "no human being is illegal". In their daily work and lives, these local actors strive to defend undocumented migrants' human rights, including the right to health care, education and training, fair working conditions and housing, as well as many other rights. Yet undocumented migrants are confronted on a daily basis with situations in which they witness that irregular status is an obstacle and a way of discriminating a sizeable part of the population in accessing basic social services and in upholding their human rights.

www.picum.org/sites/default/files/data/UndocumentedMigrantsHaveRights!.pdf

8.3 Understanding the psychological impact of smuggling of migrants on the migrant

The process of smuggling can be extremely difficult for the smuggled migrant. To learn more about the hardships endured by smuggled migrants in the process of being smuggled, see Tool 1, section 13. Some smuggled migrants may experience one or more traumatic incidents as a result of being smuggled and may have adopted psychological tactics to cope. To understand the possible reactions to these events, it is important to understand the concept of trauma. Trauma can have a serious short- and long-term impact on the individual and a failure to treat it appropriately could severely compromise attempts to bring the smugglers of migrants to justice.

What is trauma?

Trauma is defined as follows:

> "The essence of trauma is that it overwhelms the (trauma) victim's psychological and biological coping mechanisms. This occurs when internal and external resources are inadequate to cope with the external threat."[1]

Trauma occurs when a person's psychological and biological coping mechanism is unable to cope with the external threat. Unpredictability and uncontrollability of events can contribute significantly to trauma. These factors are often key features of a smuggling experience. Smuggled migrants may also have experienced violence either before or during their experience; smugglers often use force or threats and intimidation to keep migrants under control. The conditions that migrants often endure in migrating are often inhuman, with constant risk to life.

What are the symptoms of trauma?

Trauma can manifest in different people in different ways. In all professional situations connected with the smuggling of migrants, supreme respect for each person's individuality must be shown.

If a migrant reacts in a hostile or aggressive way, even after being rescued, this may have nothing personal to do with the rescuer, their role or the organization they work for. Such reactions may be a coping mechanism developed to survive whatever ordeal the migrant has endured.

Trauma victims can suffer simultaneous mental and physical health problems of varying duration.

[1] J. A. Saporta, and B. A. van der Kolk, "Psychobiological consequences of severe trauma", in *Torture and its Consequences: Current Treatment Approaches*, Metin Basoglu, ed. (Cambridge, Cambridge University Press, 1992).

Physical health symptoms can include:

- Fatigue and weight loss
- Neurological symptoms
- Gastrointestinal problems

Mental health symptoms can include:

- Depression
- Anxiety
- Hostility

Post-traumatic stress disorder is a mental health disorder caused in part by traumatic events, which can occur over a long period of time. This disorder manifests in a number of severe psychological symptoms experienced by those who have been exposed to life-threatening experiences. Symptoms of post-traumatic stress disorder can include recurrent thoughts, memories of terrifying events, difficulties in sleeping and an inability to feel emotions.

What are the implications of trauma in connection with criminal justice?

Trauma can mean that a person's behaviour towards criminal justice practitioners could be hostile and/or uncooperative. A traumatized person also may suffer from memory loss, lapses and discrepancies in the storyline, outbursts and irrationality and continuing anxiety and disorientation.

The levels of psychological trauma experienced by some migrants (either before or during the smuggling process) may be so high that they are never going to be able to serve as witnesses in court or even give an account that can be used as the basis of intelligence. On the other hand, it is also possible that some individuals who suffer trauma, may, with time and professional support or counselling, become perfectly capable witnesses.

How should criminal justice practitioners respond when smuggled migrants are suffering from trauma?

If a person who has been intercepted is subjected to challenging and direct questioning at too early a stage, this may alienate or even re-traumatize them. A considered, methodological and non-judgemental approach is the most likely to yield an accurate picture of events.

The impact that the psychological reactions of trauma have on investigation and prosecution can potentially be minimized by the following means:

- Addressing the immediate needs of the person before starting the interview
- Taking more breaks than usual during interviews
- Arranging for comfortable shelter or safe houses and other support services
- Ensuring that any promises made can always be kept

Practitioners should always be prepared to terminate interviews with a traumatized person and seek immediate assistance for them.

Recommended resources

United Nations Office on Drugs and Crime. *Anti-Human Trafficking Manual for Criminal Justice Practitioners.* New York, 2009.

The *Manual* was developed in line with the Trafficking in Persons Protocol supplementing the United Nations Convention against Transnational Organized Crime.* Though the purpose of the *Manual* is to support prevention of trafficking in persons, Module 3 specifically addresses trauma and its symptoms.

www.unodc.org/documents/human-trafficking/09-80667_module3_Ebook.pdf

International Organization for Migration. *Introduction to Basic Counselling and Communication Skills: IOM Training Manual for Migrant Community Leaders and Community Workers.* 2009.

This *Manual* is a tool to strengthen basic counselling and communication skills. The *Manual* is designed for use by humanitarian workers such as development and community health workers and leaders who engage with migrants and mobile populations. The *Manual* will strengthen counselling and communication skills that can be used to assist children, adolescents, adults and families living in migrant and host communities and to help them cope before, during and in the aftermath of a pandemic or any other crisis.

http://publications.iom.int/bookstore/indexphp?main_page=product_info&products _id=511

Alanna Ryan, International Catholic Migration Commission, *Protecting the human rights of migrant victims of violence or trauma: a question of implementation?*, statement to the 61st annual DPI/NGO Conference, Paris, 5 September 2008.

www.icmc.net/activities/protecting-human-rights-migrant-victims-violence-or-trauma

*Ibid., vol. 2237, No. 39574.

8.4 Rescue at sea

The following is an excerpt from the Smuggling of Migrants Protocol:

Smuggling of Migrants Protocol

Article 7. Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

…

Article 9. Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:

(a) Ensure the safety and humane treatment of the persons on board;

(b) Take due account of the need not to endanger the security of the vessel or its cargo;

(c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;

(d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

This section of the Protocol allows States parties that encounter vessels suspected of involvement in smuggling to board and search such vessels under certain circumstances. The dilapidated condition of vessels often used by smugglers and the fact that boarding may take place at sea and far from safe harbour conditions raise concerns about the basic safety and security of migrants and others on board such vessels. Stopping and boarding vessels also raise concerns about the sovereignty of States to which such vessels are flagged or registered and about the commercial losses to shipowners that might result. For these reasons, the Protocol incorporates basic safeguard requirements to protect such interests before and during boarding and to make some provision for access to remedies later, in cases where the search proves to be unfounded. (For more on this, see Tool 7, section 22, in which article 8 of the Smuggling of Migrants Protocol is discussed.)

It should also be noted that the International Maritime Organization and the Office of the United Nations High Commissioner for Refugees have expressed concern that unnecessary searches or detention of vessels may deter masters of vessels from meeting fundamental humanitarian requirements, including the rescue of migrants from small vessels found in distress at sea. In establishing and implementing powers to stop and search vessels and to detain vessels or crew members who may be witnesses (but not criminal suspects), legislators should bear in mind that such procedures should be carefully considered and used with as much restraint as possible.

Obligation to assist

The United Nations Convention on the Law of the Sea (United Nations, *Treaty Series*, vol. 1833, No. 31363), sets out the long-standing obligation of a State to require the master of a ship flying its flag to render assistance to persons and ships in distress at sea.

Article 98, paragraph 1, of the United Nations Convention on the Law of the Sea provides as follows:

> 1. Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers:
>
> *(a)* to render assistance to any person found at sea in danger of being lost;
>
> *(b)* to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
>
> *(c)* after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

The duty to render assistance is not just applicable in the high seas, but also extends to maritime zones (see article 18, paragraph 2, article 39, paragraph 1 *(c)*, article 45, article 52, article 54 and article 58, paragraph 2, of the United Nations Convention on the Law of the Sea).

Paragraphs 73-76 and 88-92 of General Assembly resolution 63/111 deal with the treatment of persons rescued at sea, including trafficking in persons and smuggling of migrants by sea. In paragraph 91 of the resolution, the Assembly welcomed the ongoing cooperation between members of the inter-agency group on the treatment of persons rescued at sea.

www.unhcr.org/refworld/docid/49c226da0.html

The following is a background note produced by the Office of the United Nations High Commissioner for Refugees, entitled "The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert roundtables convened by the Office of the High Commissioner for Refugees":

Introduction

The Office of the United Nations High Commissioner for Refugees has convened three recent meetings on rescue at sea and refugee protection:

- The Expert Roundtable on Rescue-at-Sea in Lisbon, Portugal in March 2002;
- The Expert Meeting on Interception and Rescue in the Mediterranean in Athens, Greece in September 2005; and
- The meeting of State Representatives on the same issue in Madrid, Spain in May 2006.

The meetings brought together participants from governments, the shipping industry, international organizations, non-governmental organizations and academia. They resulted in a number of important observations and recommendations, aimed at preserving the integrity of the global search and rescue (SAR) regime for which irregular migration poses a particular challenge, and at meeting the humanitarian and protection needs of those in distress. However, participants also recognized that efforts to improve search and rescue operations for migrants and refugees in distress at sea are only one aspect of addressing the broader challenges of irregular maritime migration. This requires tackling all the different aspects of this phenomenon in a comprehensive manner, from the root causes to differentiated solutions after disembarkation.

The points below synthesize the key conclusions coming out of these meetings. They include suggestions for the strengthening of the maritime SAR regime, as well as recommendations for a broader approach to address irregular maritime migration beyond the imminent rescue phase.

Conclusions and recommendations

Irregular maritime migration

- Irregular maritime migration is only a small component of the overall phenomenon of international migration, but it raises specific challenges which need to be addressed.
- While it is not in essence a refugee problem, there are refugee protection issues to contend with which must be addressed as part of the broader response to irregular maritime migration, and asylum must be effectively made available in such situations for those requiring it.
- Irregular maritime migration requires a collaborative response, involving a wide range of actors, including intergovernmental organizations.
- Human rights and refugee law principles are an important point of reference in handling rescue-at-sea situations.

Preserving the integrity of the search and rescue regime

The rescue of persons in distress at sea is not only an obligation under maritime law but also a humanitarian necessity, regardless of who people are and what their reasons are for moving.

- The integrity of the global SAR regime as governed by the SOLAS and SAR Conventions must be scrupulously protected. This is a responsibility of the international community as a whole.
- All States should implement strict safety standards before authorizing any boat to depart their ports or shores.
- States should be encouraged to support the recently adopted amendments to the SAR and SOLAS Conventions, which provide clarity on the responsibility of Contracting States to provide a place of safety; or to ensure that a place of safety is provided under the coordination of the State responsible for the SAR region in which the survivors were recovered.
- States should facilitate rescue operations by ensuring that the necessary enabling arrangements are in place in their SAR area.
- It may be necessary to support and assist other States in establishing functioning, sustainable SAR facilities. Such support could also lead to gradual harmonization of approaches to SAR.
- States should take the necessary measures to disseminate to shipmasters and government officials involved in rescue-at-sea operations relevant provisions of maritime law and accompanying guidelines, including the new amendments.
- States should avoid the categorization of interception operations as SAR operations, as this can lead to confusion with respect to disembarkation responsibilities.

Duties of shipmasters, shipping and insurance agencies

- The responsibility to rescue is an obligation of shipmasters, established under maritime law. The duty is triggered at the outset of the actual rescue and ends when passengers have been disembarked at a place of safety.
- Decisions as to when and where to land rescued persons will be influenced by factors such as the safety and well-being of the ship and its crew, and the appropriateness of the place of landing (safety, closeness, and the ship's pre-rescue schedule).
- Shipping and/or insurance companies should promptly inform the International Maritime Organization (IMO), UNHCR and other relevant actors when disembarkation proves problematic or when rescued persons claim international protection. This facilitates cooperation in finding an appropriate disembarkation solution.
- Cases of refusal of disembarkation should be documented by shipping companies and reported to the IMO. This information can then be used by relevant intergovernmental organizations to better quantify the problem and devise solutions with the concerned States.
- Shipping and insurance companies should provide regular statistics to the IMO on incidents of stowaways and people rescued at sea.

- Shipping companies should ensure that shipmasters are made aware of the practical consequences resulting from the IMO guidelines on the treatment of persons rescued at sea through the provision of multilingual information material.

Minimizing the inconvenience for private actors in fulfilling their maritime obligations

- Shipmasters who undertake rescue operations should not be seen as part of the problem; rather, their actions in saving lives should be recognized and supported by States.
- Their professional judgment as regards the determination of when and where to land the persons rescued should be respected.
- Shipping companies should not be penalized in any manner whatsoever for disembarking or attempting to disembark people rescued at sea.
- The shipmaster has the right to expect the assistance of coastal States with facilitation and completion of the rescue.
- States should not impose a requirement that shipping companies or their insurers cover the repatriation costs of stowaways or people rescued at sea as a precondition for disembarkation.
- A non-state vessel is not an appropriate place to screen and categorize those rescued, or devise solutions for them. Nor should it be used as a "floating detention centre".

Disembarkation

- The responsibility for finding solutions to enable timely disembarkation in a humane manner rests exclusively with States and not with private actors. States have a duty to cooperate in finding a place of safety under maritime law.
- Disembarkation procedures should be governed by the maritime regime, not by immigration control objectives.
- Disembarkation procedures should be harmonized, speedy and predictable in order to avoid recurrent case-by-case time consuming negotiation problems, which can endanger the lives of those rescued. Procedures should balance the interests of the shipping industry and the basic needs of individuals rescued at sea.
- Disembarkation, particularly when it involves large numbers, does not necessarily entail the provision of durable solutions in the country of disembarkation.

Reception standards, profiling and referral to differentiated procedures after Disembarkation

- Comprehensive reception arrangements should be established for persons rescued at sea which meet the needs of the rescued persons, according to their different situations.
- Rapid response teams could assist States facing large-scale arrivals.
- There may be value in establishing multidisciplinary teams (including government experts as well as international and local governmental and non-governmental organizations) for maritime arrival situations; such teams would address any immediate needs, provide information and refer arrivals to appropriate response

mechanisms (profiling). These teams may include or benefit from the expertise of non-governmental organizations.

- Persons claiming international protection should be allowed to enter the national asylum procedure without delay; in countries where no asylum procedure exists, they should be referred to UNHCR. The State providing for disembarkation will generally be the State whose refugee protection responsibilities are first engaged.
- Fair and efficient asylum procedures help to separate individuals with international protection needs from those who do not have such needs.
- Trafficked persons and other vulnerable groups such as separated children will require specific assistance. They may also have international protection needs.

Comprehensive solutions

- Persons with international protection needs should receive protection and, in due course, access to a durable solution, either through local integration or resettlement.
- Persons not seeking asylum, and those who are found not to be in need of international protection or have no other compelling humanitarian reasons to remain, should be encouraged and assisted to return to their country of origin in humane and safe conditions, unless an alternative legal migration option might be available to them. The International Organization for Migration (IOM) and other organizations may offer support to States in implementing assisted voluntary return programmes.
- Return should be complemented by efforts to reintegrate migrants in their community of origin, to ensure the sustainability of return and avoid a "recycling" phenomenon.
- The development of an appropriate response to secondary movements of refugees is a critical challenge.

Combating smuggling and trafficking

- More vigorous and effective action is needed to identify, arrest and prosecute smugglers and traffickers.
- States should renew their cooperation in protecting witnesses and victims who assist in identification and prosecution of smugglers and traffickers.
- Measures to combat people smuggling must not undermine international refugee protection responsibilities.

Prevention: information strategy and addressing root causes

- Multilateral cooperation should include a proper review of mechanisms for the creation of orderly migration and protection channels, to provide alternative opportunities for migrants.
- States, relevant inter-governmental organizations and non-governmental actors should explore the feasibility of establishing mass information campaigns to inform prospective clandestine passengers of the risks associated with irregular maritime migration. Such campaigns would also need to touch on the various risks associated

with overland travel en route to the prospective embarkation point. They should be targeted at communities in countries of origin, transit countries and migrant communities in countries of destination.

- States should adopt broader, longer-term multilateral commitments to address the root causes of irregular migration. Additional efforts are called for, such as re-targeting aid to achieve sustainable development and the development of alternative legal migration channels.

Improved information management

- Empirical data on the scale and scope of irregular maritime migration, interception, rescue at sea, disembarkation and treatment of persons disembarked should be harmonized and more systematically compiled by governments and international agencies. Statistical information should include the number and profile of persons intercepted and disembarked as stowaways or following a rescue.
- An exchange of data would enable all stakeholders to better address emerging trends and reinforce their cooperation to combat trafficking and abuse or exploitation of migrants.
- Improved communication procedures among all actors and a better understanding and analysis of the challenges in relation to disembarkation may facilitate sharing of best practices and the identification and realization of timely and fair solutions.

Cooperation and responsibility sharing

International cooperative efforts to address complex rescue-at-sea situations should be built around burden-sharing arrangements. These arrangements could encompass the processing of asylum applications and/or the realization of durable solutions, such as resettlement. Further, they should address, as appropriate, the issue of readmission to first countries of asylum and/or safe third countries. Burden-sharing arrangements should be in place with regard to persons not in need of international protection.

UNHCR should mobilize States to establish adequate burden-sharing arrangements and/or standby resettlement programmes, as appropriate.

Available from www.unhcr.org/475555192.html

Promising practice

Sicilian trawler and the Office of the United Nations High Commissioner for Refugees help in rescue of 27 Somalis, 10 June 2008

A fishing boat captain from the Italian island of Sicily, Gaspare Marrone, was fishing with his crew south of Lampedusa Island, when they spotted a boat in distress. The Italians started bringing the 30 Somali passengers on board, but in the process the boat capsized and 3 people were unaccounted for. Nicola Asaro, another Italian captain fishing in the area, called the Senior Regional Public Information Officer of the Office of the United Nations High Commissioner for Refugees, Laura Boldrini, by satellite phone and told her that Marrone

and his crew were trying to mount a rescue operation but were having difficulties. Boldrini passed the information (including the coordinates of Marrone's fishing boat) to the Italian coastguard and navy, which sent help. Marrone detached his boat from the tuna pen it was towing and rescued 20 men and 7 women. The migrants were taken to Porto Empedocle, in Italy, after they moved onto a navy vessel.

Both Asaro and Marrone were each presented with a Per Mare award for their efforts. The Per Mare award was established in response to the problem of boat people in distress in the Mediterranean often being ignored by crews of commercial vessels out of fear that they would be investigated for being involved in illegal migration.

Source: www.unhcr.org/484e98002.html

Recommended resources

International Convention for the Safety of Life at Sea. United Nations, *Treaty Series,* vol. 1184, No. 18961.

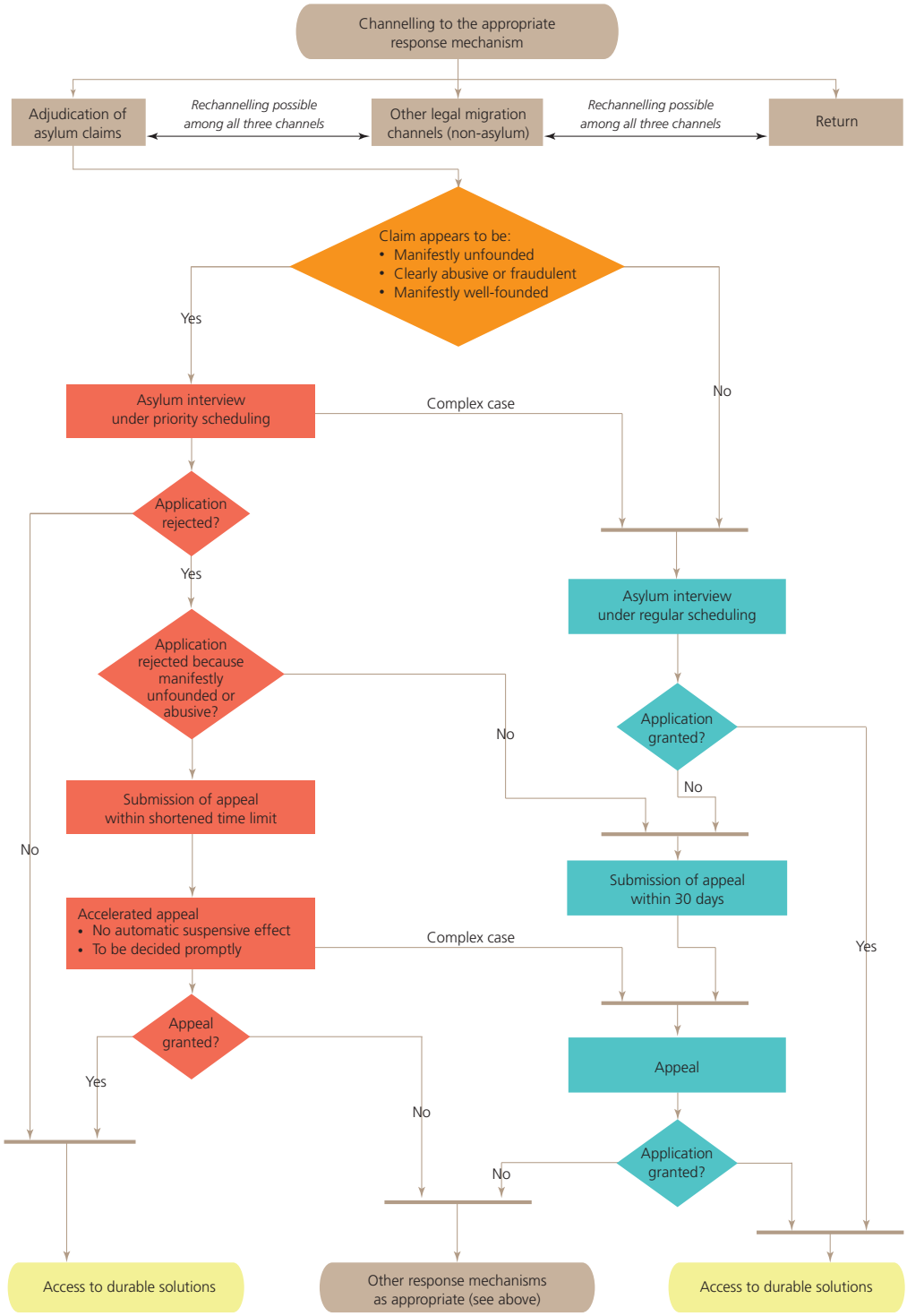
International Convention on Maritime Search and Rescue. United Nations, *Treaty Series,* vol. 1405, No. 23489, annex.

United Nations Convention on the Law of the Sea. United Nations, *Treaty Series,* vol. 1833, No. 31363.

Report of the Office of the United Nations High Commissioner for Refugees on the treatment of persons rescued at sea (A/AC.259/17).

8.5 Referral mechanisms

The figure below is a schematic representation of a profiling and referral mechanism in the context of addressing mixed migratory movements.



Source: Discussion paper on refugee protection and durable solutions in the context of international migration. Available from www.unhcr.org/474acdc42.html.

8.6 Health and medical assistance

All humans have the right to health care. The International Covenant on Economic, Social and Cultural Rights[2] includes a comprehensive article on the human right to health. By virtue of article 12, paragraph 1, of that Convention, States parties recognize "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". The Committee on Economic, Social and Cultural Rights offered clarification on this article in its General Comment No. 14 (2000) (E/C.12/2000/4), concerning the right to the highest attainable standard of health. In that document (paragraph 34), the Committee stated that:

> States are under the obligation to respect the right to health, by inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum-seekers and illegal immigrants, to preventative, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy.

The full general comment is available from: www1.umn.edu/humanrts/gencomm/escgencom14.htm

Promising practices

Emergency kits in the desert

Saving migrants' lives often requires simple but creative responses.

For instance, in response to the deaths that sometimes result from the perilous journey across the Mexican desert to reach the southern border of the United States, law enforcement authorities have placed emergency first aid kits along well-known smuggling routes and trails.

This simple measure can be replicated along other popular smuggling routes in harsh terrains around the world and may result in saved lives.

MIGHEALTHNET

The MIGHEALTHNET project aims to stimulate the exchange of knowledge on migrant and minority health through the development of interactive databases in each of the participating countries. The focus will be on the following sorts of data:

- Background information concerning migrant and minority populations
- The state of health of migrants and minorities
- The health-care system and the entitlement of migrants and minorities to health care
- Accessibility of health care

[2] General Assembly resolution 2200 A (XXI), annex.

- Quality of care: good practices developed to improve the matching of service provisions to the needs of migrants and minorities
- Achieving change: centres of expertise, general reports and policy documents, journals, training programmes, e-mail groups etc.

By facilitating the transfer of knowledge and expertise and stimulating network formation within and between European countries, the project hopes to further the development of good practices concerned with the health of migrants and minorities.

www.mighealth.net/index.php/Main_Page

NowHereLand

Access to health care is a fundamental human right and, it is especially important for socially disadvantaged and vulnerable people. Although European Union member States do acknowledge the right for health care for everybody, undocumented migrants face considerable barriers in accessing services. The NowHereLand initiative aims at creating a knowledge base for providing, exchanging and developing good practice of health-care services for undocumented migrants through:

- Drawing a landscape of the legal and financial frameworks at the national level in the 27 European Union member States under which health-care services/providers act
- Gaining an overview about needs and strategies of undocumented migrants in getting access to health-care services, compiling experiences from non-governmental organizations and other advocacy groups from their work with undocumented migrants (from European to local level)
- Collecting existing practice of health services in the European Union at the regional and local levels in a database and identifying transferable models of good practice

As part of the initiative, a database on health-care services available to undocumented migrants is being established by the Task Force on Migrant Friendly Culturally Competent Healthcare of the Health Promoting Hospital and Health Services Network.

www.nowhereland.info

Recommended resources

International Organization for Migration. *Activity Manual for Immigration Officers and Relevant Persons in Migrant Health Care*. 2009.

The *Activity Manual* was developed through a series of consultative meetings and a pretest with immigration police, immigration doctors, public health officers and representatives of migrant populations in Thailand. Although the *Manual* is intended to enhance the knowledge, understanding and attitudes of immigration and public health officers on migrant health care in closed settings, it can be adapted to other audiences, including at the community level. In addition to enhancing understanding

of the most common health issues among migrant detainees, such as personal hygiene, tuberculosis and stress management, the *Manual* aims to improve the target audience's understanding of migration-related issues, including trafficking in persons.

http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=518&zenid=4285ded5fa41b457c60a2b7b8eccea39

International Organization for Migration. *Introduction to Basic Counselling and Communication Skills: IOM Training Manual for Migrant Community Leaders and Community Workers.* 2009.

The *Training Manual* is a development tool to strengthen basic counselling and communication skills. The *Manual* is designed for use by humanitarian workers, such as development and community health workers and leaders, who deal with migrants and mobile populations. The *Manual* is designed to strengthen counselling and communication skills that can be used to assist children, adolescents, adults and families living in migrant and host communities and to help them cope before, during and after a pandemic or any other crisis.

http://publications.iom.int/bookstore/index.php?main_page=product_info&products_id=511

Platform for International Cooperation on Undocumented Migrants. *Access to Health Care for Undocumented Migrants in Europe.* 2009.

This report is a product of a two-year European project co-funded by the Employment and Social Affairs and Equal Opportunities Directorate General of the European Commission. Partners include Austria, Belgium, France, Germany, Hungary, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. The main purpose of the publication is to highlight the various problems associated with existing lack of or insufficient access to health care for undocumented migrants residing in Europe. Access to health care for undocumented migrants is considered in respect of laws and practice through country profiles.

It deals with legal system information concerning:

- The general health-care system
- The legal entitlements of undocumented migrants to access fully or partially publicly subsidized health care
- The procedures and financing of the different systems put in place by European Union member States to give a response to undocumented migrants' health-care needs

Ultimately, the study seeks to serve as an inspiration for new strategies and actions to continue to address the problems associated with insufficient access to health care for undocumented migrants in Europe.

The report offers the following recommendations:

1. Respect international obligations
2. Address health-care needs of particularly vulnerable groups of undocumented migrants (such as children, pregnant women, elderly persons, disabled persons and people with severe health problems, including HIV/AIDS)
3. Ensure implementation of entitlements
4. Ensure access to information about entitlements
5. Detach health care from immigration control
6. Ensure that civil society always plays a complementary role
7. Avoid criminalization of humanitarian assistance
8. Include undocumented migrants in the social inclusion-social protection process
9. Involve civil society in the consultation process
10. Ratify the International Migrant Workers' Convention

The full recommendations can be read in the report, available at www.picum.org or by contacting info@picum.org.

8.7 Responses to the vulnerability to HIV/AIDS of smuggled migrants or persons vulnerable to being smuggled

In addressing the nexus between HIV/AIDS and human mobility, it is essential not to further marginalize migrants or exacerbate the problem with strict migration controls that aim to keep out migrants. That would not only contribute to the stigmatization that migrants and people living with HIV already endure, but would also contribute to the intersection of HIV/AIDS and migration by increasing the number of people who cannot access social and medical services and also, perhaps by fuelling the clandestine movement of people, pushing more people into the hands of smugglers of migrants.

Rather than preventing people from moving, there must be HIV/AIDS interventions targeting migrant populations, ranging from education and prevention through testing and counselling to treatment and care.

Different forms of migration require different policy responses. This is true for migrants who are smuggled or who are vulnerable to being smuggled. Providing migrant communities with appropriately targeted HIV/AIDS interventions is one means of dealing with the HIV/AIDS epidemic.

Migration, whether regular or irregular, is the means by which many people seek security for themselves and their families. It should not also expose them to HIV.

Recommended resources

For more information about the relationship between health and migration, see Tool 1, section 5.

Joint United Nations Programme on HIV/AIDS

The Joint United Nations Programme on HIV/AIDS (UNAIDS) is an innovative joint venture of the United Nations family, bringing together the efforts and resources of 10 organizations in the United Nations system active in the AIDS response to help the world prevent new HIV infections, care for people living with HIV and mitigate the impact of the epidemic. UNAIDS helps to mount and support an expanded response to AIDS—one that engages the efforts of many sectors and partners from government and civil society. Co-sponsors of UNAIDS include the International Labour Organization, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Development Programme, the United Nations Fund for Population Activities, the United Nations Office on Drugs and Crime, the United Nations Educational, Scientific and Cultural Organization, the World Food

Programme, the World Health Organization and the World Bank. UNAIDS has five areas of focus for a more effective global response to AIDS:

- Mobilizing leadership and advocacy for effective action on the epidemic
- Providing strategic information and policies to guide efforts in the AIDS response worldwide
- Tracking, monitoring and evaluation of the epidemic: the world's leading resource for AIDS-related epidemiological data and analysis
- Engaging civil society and developing partnerships
- Mobilizing financial, human and technical resources to support an effective response

www.unaids.org

United Nations Development Programme. *Readings on Safe Mobility and HIV: II.* 2007

Belinda Dodson and Jonathan Crush consider the intersection between HIV/AIDS and migration in the context of Southern Africa.

http://data.undp.org.in/hiv/IEC/Vol%202.pdf

8.8 Access to information and legal representation

States need to encourage the participation of smuggled migrants in the criminal proceedings against the smuggler. The migrants are an important source of evidence for the successful prosecution of a smuggling case.

It is difficult to persuade witnesses to come forward in relation to most crimes. Witnesses may be scared or intimidated but most people who agree to cooperate with law enforcement officials ultimately, despite any fears, attend court, if required, to support the prosecution. The same cannot always be said for smuggled migrants for the following reasons:

- Smuggled migrants may be intimidated by real threats to their physical safety, to members of their families at home, where there may be little prospect of police protection
- Some smuggled migrants may be led to believe that they will be given a full or partial refund of the smuggling fee if they do not cooperate with the authorities
- Smuggled migrants may be scared of being arrested and prosecuted for being party to the crime
- Smuggled migrants may also remove themselves from contact with the immigration or law enforcement agencies as they may want to stay hidden in order to stay in the country reached as a result of the smuggling process (or move on to their country of destination if they have not yet reached it)
- Smuggled migrants may have been removed back to their own country and therefore be unavailable to give evidence in court
- Witnesses have no incentive to give evidence and everything to lose. Migrants are often told that if they do not assist the authorities if caught, they will be allowed a further attempt at illegally entering a country without being charged by the smuggler again

Promising practice

Belgium

An administrative regulation, which entered into force on 26 September 2008 in Belgium, provides that where migrants were smuggled under aggravating circumstances they are offered the same protection as victims of trafficking.

The regulation defines the persons who can benefit from the protection as: *(a)* victims of trafficking as provided for in article 433 of the Belgium Criminal Code; and *(b)* smuggled migrants who endured certain forms of aggravated offences of smuggling of migrants as provided for in article 77 of the Belgium Law on Aliens (relating to unaccompanied minors; abuse of a situation of particular vulnerability; use of manipulation, threat or force; endangerment of life; and causing of an incurable illness, injury or permanent disability).

The regulation stipulates that when the police are faced with a situation in which there is evidence to suggest that a person is a victim of human trafficking or smuggling of migrants, the police must first try, in collaboration with the specialist services, to gather additional material evidence indicating that that person is indeed a victim. At this stage, brief information can be provided to the presumed victim concerning the possibilities offered by victim status if the victim collaborates with the judicial authorities.

As a second step, on the basis of the material evidence gathered, the regulation stipulates that the relevant police service: *(a)* informs the public prosecutor; *(b)* contacts one of the three specialized non-governmental organization shelters registered in Belgium to request the shelter to take the victim under its charge; and *(c)* notifies the Department of Federal Immigration. The public prosecutor will then assess whether or not granting victim status is justified at that stage of the procedure.

The regulations outline three general conditions that all have to be met by the presumed victim for victim status to be granted:

- He or she must sever contact with the presumed offender(s)
- He or she must remain under the charge of a specialized shelter at all times
- He or she must cooperate with the judicial authorities by filing a charge or making a statement, which will be assessed by the prosecutor

The procedure of granting victim status comprises, among other things:

- A reflection period: the presumed victim is allowed to stay in Belgium for a period of 45 days, which enables the victim to sever contact with the criminal milieu and decide dispassionately whether he or she wishes to collaborate with the judicial authorities. During this stage, the victim can also decide to return to his or her country of origin, but may not be deported
- Subsequent permission to stay for a maximum of three months (with the possibility of a one-month extension): at that stage the victim decides to file a charge or make a statement. From the time of issue of the registration document, the victim can obtain a class C work permit
- Permission to remain in the country for an unlimited period: this permission is issued when the statements made or charges filed by the victim have led to a conviction or, as a minimum requirement, when the public prosecution service has established the charge of trafficking or aggravated trafficking in the case for the prosecution

Recommended resources

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in the training manual address the concepts and categories of smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigation, covert

investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts in the field of law enforcement and prosecution from several regions throughout the world.

The publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

McBride, Jeremy. *Access to Justice for migrants and asylum seekers in Europe*. Council of Europe, 2009.

The publication contains an assessment of the situation faced by this vulnerable category of persons in accessing justice. It deals with the identification of measures—both existing and new—for facilitating and ensuring such access for those people.

http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=2412

8.9 Human rights of smuggled migrants

Regardless of a person's immigration status, their human rights and dignity should be upheld and given priority at all stages.

In transit and destination countries, that means that human rights considerations must be borne in mind by those who intercept and identify smuggled migrants, those who detain them, those who remove them from a country and, where relevant, those who grant them asylum. Law enforcers in countries of origin also have a role to play in preventing the smuggling of migrants: they protect the human rights of nationals to reduce the root causes that give them an incentive to leave.

While States have a right to detain and remove irregular migrants (assuming they are not found to be refugees), they also have a responsibility to do so using measures that respect human rights and the safety and dignity of the migrant concerned.

Rights of smuggled migrants who are victims of crimes committed in the course of the smuggling process

Law enforcers who are likely to encounter victims of crime should do the following:

- Respond promptly, especially to complaints of violence
- Inform victims of the assistance (legal, material, medical, psychological and social) that is available to them
- Investigate, report and follow up thoroughly and professionally
- Keep a roster of contacts handy, with all information on available services for assistance to victims
- Establish close cooperative procedures with medical, social, legal and other victim assistance providers
- Ensure that a female officer is present during all contact with female victims of crime, especially violence
- Explain to victims their rights, their role in legal proceedings and the nature of the legal proceedings
- Provide transportation to a safe place and, if necessary, to medical services (or arrange for medical services to travel to the victim)
- Keep records secure and carefully protect the confidentiality of victims
- Establish victim assistance guidelines to ensure that prompt, proper and comprehensive attention is given to the legal, material, medical, psychological and social assistance needs of victims

Promising practice

Platform for International Cooperation on Undocumented Migrants

The Platform for International Cooperation on Undocumented Migrants is a non-governmental organization that aims to promote respect for the human rights of undocumented migrants within Europe. The Platform also seeks dialogue with organizations and networks with similar concerns in other parts of the world.

The Platform promotes respect for the basic social rights of undocumented migrants, such as the right to health care, the right to shelter, the right to education and training, the right to minimum subsistence, the right to family life, the right to moral and physical integrity, the right to legal aid and the right to fair labour conditions.

The activities of the Platform are focused on five main areas:

- Monitoring and reporting: improving the understanding of issues related to the protection of the human rights of undocumented migrants through improved knowledge of problems, policies, and practice
- Capacity-building: developing the capacities of non-governmental organizations and all other actors involved in effectively preventing and addressing discrimination against undocumented migrants
- Advocacy: influencing policymakers to include undocumented migrants in social and integration policies on the national and European levels
- Awareness-raising: promoting and disseminating the values and practices underlying the protection of the human rights of undocumented migrants among relevant partners and the general public
- Global actors on international migration: developing and contributing to the international dialogue on international migration within the different United Nations agencies, international organizations and civil society organizations

More information about the Platform for International Cooperation on Undocumented Migrants can be found at its homepage:

www.picum.org/

Recommended resources

Office of the United Nations High Commissioner for Refugees

The Office of the United Nations High Commissioner for Refugees was established on 14 December 1950 by the General Assembly. The agency is mandated to lead and coordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in

another State, with the option to return home voluntarily, to integrate locally or to resettle in a third country. It also has a mandate to help stateless people. The Office offers several resources and publications on its website.

www.unhcr.org

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

Module 9 of the *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* exclusively addresses human rights considerations for criminal justice practitioners responding to the smuggling of migrants.

www.unodc.org/unodc/en/human-trafficking/publications.html

Council of Europe, Commissioner for Human Rights. *The Human Rights of Irregular Migrants in Europe*. Strasbourg, 2007.

Historically, the State has pledged to protect the rights of its citizens at home—for instance from torture or from exploitation—and of citizens of other States who enter the country lawfully. Where refugees flee persecution at the hands of their own State, international law requires other States to provide the protection denied at home. This paper deals with another category: migrants who are not refugees or asylum-seekers and who are in another country without the State's consent. Perceptions of these irregular migrants are polarized. "Irregular migrant" refers to non-citizens who have no valid leave to enter and/or remain within a State. The countries from which they come often see this as migration out of necessity, not choice, and also as the source of remittances that support families and contribute to development. Host States tend to see them as non-citizens who are illegally in the country and should be removed at the earliest opportunity. From a human rights perspective, migrants are entitled to protection under international law, regardless of any irregularity under national law.

http://wcd.coe.int/ViewDoc.jsp?id=1237553&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679

Global Migration Group. *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights.* 2008.

Current migration flows have placed the issue of migration high on the international agenda. The magnitude and complexity of the phenomenon are such that international migration can no longer be considered peripheral to the mainstream of development policies. Today, every country is affected in some way by migration—either as country of origin, transit or destination, or sometimes a combination of these.

www.globalmigrationgroup.org/pdf/Int_Migration_Human_Rights.pdf

Grant, Stefanie. "International migration and human rights". A paper prepared for the Policy Analysis and Research Program of the Global Commission on International Migration. 2005.

The paper contains a review of the actual and legal situation of international migrants in relation to their enjoyment of human rights. It starts from the position that respect for human rights, the rule of law and core labour standards are essential to political stability and social and economic development. Globalization has encouraged the free movement of goods, services and capital, but barriers to the cross-border movement, particularly of unskilled workers, remain, and globalization of markets has not been accompanied by globalization of the workforce. This has produced a discrepancy between the number of individuals who migrate and the legal opportunities for them to do so.

www.gcim.org/attachements/TP7.pdf

International Labour Office. *The Asylum-Migration Nexus: Refugee Protection and Migration Perspectives from ILO.* 2001.

The paper is intended as a contribution to the discussion of the nexus between refugee and migration issues. It is presented from the perspective of a standard-based international organization committed to upholding protection of human rights of migrant workers and members of their families defined in International Labour Organization and other international norms.

www.unhcr.org/refworld/topic,4565c2251a,470a33e22,3f33797e6,0.html

Office of the United Nations High Commissioner for Human Rights. *The Rights of Non-Citizens.* United Nations publication (Sales No. E.07.XIV.2).

The publication contains a discussion of:

- The general principle of equality for non-citizens
- Specific rights of non-citizens
- Rights of selected non-citizen groups

It also contains recommendations on upholding the rights of non-citizens.

www.ohchr.org/Documents/Publications/noncitizensen.pdf

Ruhs, Martin. *Migrant Rights, Immigration Policy and Human Development.* Human Development Research Paper 2009/23. United Nations Development Programme, 2009.

The author explores the potential impacts of the rights of migrant workers ("migrant rights") on the human development of actual and potential migrants, their families, and other people in migrants' countries of origin. A key feature of the paper is its consideration of how migrant rights affect both the capability to move and work in

higher-income countries (i.e. the access of workers in low-income countries to labour markets of higher-income countries) and capabilities while living and working abroad. The author suggests that there may be a trade-off between the number and some of the rights of low-skilled migrants admitted to high-income countries, and he explores the implications for human development.

http://hdr.undp.org/en/reports/global/hdr2009/papers/HDRP_2009_23.pdf

Cholewinski, Ryszard. *Irregular Migrants: Access to Minimum Social Rights.* (Council of Europe, 2006).

Illegally resident immigrants are a particularly vulnerable group within European societies. This publication aims to identify the minimum rights to be granted to such persons, placing the emphasis on protecting social rights in the host countries.

The author examines the issues in the light of the concern of the Council of Europe to promote human rights, maintain social cohesion and prevent racism and xenophobia, and pinpoints a number of political difficulties encountered by Governments. He stresses the potential role of the Council of Europe in counterbalancing the restrictive approach to illegal migration adopted by the European Union.

Lastly, the author considers each of the minimum rights in the light of the relevant international human rights instruments, including those adopted by the Council of Europe. He also looks at obstacles to access by illegal migrants to a minimum standard of protection in terms of each of those rights, referring to various examples of legislation and practice adopted by selected member States of the Council of Europe.

http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=1969

International Council on Human Rights Policy. *Irregular Migration, Human Smuggling and Human Rights.* 2009.

This draft report (sent out October 2009 for comments by November 2009) discusses the role of law enforcement, economic interest and human rights protection, as core influences on migration policy. It argues that current policies are in contradiction with one another and have largely failed in their purpose. Policies to tighten border controls have not deterred people from leaving their homes to seek security or opportunity abroad but have driven migrants into clandestinity, while policies to promote open markets attract millions of people to centres of prosperity but tend to disregard their abuse and exploitation. Across the world, Government policies respond ineffectively to irregular migration and also fail to protect irregular migrants' rights.

The report argues that part of any solution to the current impasse must be to recognize and reaffirm the State's responsibility to protect everyone who falls within its jurisdiction, including migrants. It concludes that it is morally right, but also in the interests of States, to affirm the rights to which migrants are entitled and integrate those rights in policy.

An annex contains a summary of the rights of irregular migrants that are recognized in international law.

www.ichrp.org/files/drafts/10/122_draft.pdf

International Council on Human Rights Policy (2003) *"Migration: Human Rights Protection of Smuggled Persons"*

This project examines the provisions that protect undocumented and smuggled migrants under international human rights law and suggests how those provisions might be integrated into migration policies, alongside economic and law enforcement considerations. It takes into account the United Nations Convention against Transnational Organized Crime and its Protocols, as well as the Convention to Protect the Rights of Migrant Workers and Their Families. The project will link support for law enforcement and State control over sovereign frontiers, economic policies that seek benefits from migration and the obligation to protect vulnerable people from exploitation and abuse. It argues that sustainable policies on undocumented migration (and on the smuggling of migrants in particular) must integrate human rights protection alongside other policy concerns.

www.ichrp.org/en/projects/122

Lambert, Hélène. *The Position of Aliens in Relation to the European Convention on Human Rights.* Council of Europe, 2007.

The law of the Council of Europe Convention on Human Rights relating to aliens has developed significantly. In 25 years, the number of contracting States has doubled and the scope of rights and freedoms guaranteed under the Convention has broadened with the adoption of new protocols.

Protocol No. 11 has reformed the Convention control bodies and mechanisms in order to accommodate the increasing caseload. Further major amendments are foreseen by Protocol No. 14 to improve the effective operation of the Convention faced with an ever-increasing volume of applications, whereas Protocol No. 12 has enlarged the non-discrimination clause contained in article 14 of the Convention to "any rights set forth by law".

At the same time, important demographic changes have taken place. The growing integration of the States of the European Union has created greater mobility for its citizens; and political and economic pressures have given rise to an increasing number of refugees and asylum-seekers from Europe and beyond.

It is against this backdrop that the position of aliens in relation to the European Convention on Human Rights is re-examined in a third edition.

http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=2131

Obokata, Tom. Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law. *International Journal of Refugee Law*, vol. 17, No. 2, pp. 394-415. 2005.

Although trafficking in human beings has been widely regarded as a human rights issue, little attention has been paid to human rights aspects of smuggling, as it is mainly characterized as facilitation of illegal migration. The purpose of this article is to demonstrate that smuggling of human beings equally raises human rights concerns. The article begins by exploring the definitions of trafficking and smuggling and their policy implications. It then highlights some human rights issues inherent in the act by examining its causes, process and consequences. It continues with an analysis of human rights obligations imposed upon non-State and State actors. The fact that non-State actors are not held directly accountable under international human rights law points to an investigation of legal obligations imposed upon States, and this article examines an obligation to protect victims as an example.

http://ijrl.oxfordjournals.org/cgi/content/full/17/2/394

Pécoud, Antoine and de Guchteneire, Paul. International migration, border controls and human rights: assessing the relevance of a right to mobility. *Journal of Borderlands Studies,* vol. 21, No. 1. 2006.

The authors discuss the arguments in favour of and against a right to mobility. They argue that contemporary migration and border policies are largely restrictive but still fail to meet their proclaimed objectives, which call for alternative approaches to international human flows. From a human rights perspective, tight border controls are accompanied by major challenges; including trafficking, the asylum crisis and the death and vulnerability of irregular migrants, which ultimately threaten the moral foundations of liberal democracies. In this context, a right to mobility may constitute a relevant answer. The authors examine the implications of such a right in terms of world justice, social cohesion, economic wealth, security, and border/migration governance.

www.libertysecurity.org/article1399.html

Platform for International Cooperation on Undocumented Migrants. *Undocumented Migrants Have Rights! An Overview of the International Human Rights Framework*. 2007.

All across Europe, and in other regions throughout the world, a growing number of non-governmental organizations, local authorities and professionals from diverse fields, as well as undocumented migrants, uphold the principle that "no human being is illegal". In their daily work and lives, these local actors strive to defend undocumented migrants' human rights, including the right to health care, education and training, fair working conditions, and housing, as well as many other rights. Yet undocumented migrants are confronted on a daily basis with situations in which they witness that irregular status is an obstacle and a way of discriminating against a sizeable part of the population in terms of their access to basic social services and their human rights.

www.picum.org/sites/default/files/data/UndocumentedMigrantsHaveRights!.pdf

Platform for International Cooperation on Undocumented Migrants. *PICUM's Main Concerns About the Fundamental Rights of Undocumented Migrants in Europe*. 2006.

This report brings together a year's-worth of European, national and local news on irregular migration to foster a better understanding of the main concerns with regard to the human rights of undocumented migrants, as well as of the multifaceted ways in which civil society throughout Europe is responding to this form of social exclusion. The information in the report is based on a review of events reported in the newsletter of the Platform for International Cooperation on Undocumented Migrants during 2008.

www.picum.org/sites/default/files/data/PICUM_AnnualConcerns_2009_EN.pdf

8.10 Protection of smuggled migrants who are refugees

In recognition of the fact that illegal or irregular migration and, in some cases, the criminal smuggling of migrants may involve the movement of legitimate refugees or asylum-seekers, precautions were taken to ensure that the implementation of the Smuggling of Migrants Protocol would not prevent such people from enjoying existing protections under international law.

The Protocol does not criminalize altruistic or charitable groups who smuggle people for purposes other than financial or other material gain (see articles 5 and 19).

Rights of smuggled migrants who are refugees or asylum-seekers and the right to asylum

Simply put, a refugee is a person who, owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group, or political opinion or for political reasons, including conflict and war, is unable or unwilling to return to his or her country of origin (or, if stateless, to his or her country of habitual residence).

An asylum-seeker is a person seeking to be admitted into a country as a refugee. If an asylum-seeker's claim for refugee status is unsuccessful, he or she may be expelled as an alien in irregular migration situation unless he or she is granted permission to stay on humanitarian or other related grounds.

Everyone has the right to seek, and to enjoy, in another country, asylum from prosecution. Some asylum-seekers may turn to the services of smugglers of migrants to flee prosecution.

For more on the issue of non-refoulement, see Tool 8, section 11.

The right to asylum

The following is an excerpt from a document by the Office of the United Nations High Commissioner for Refugees on a 10-point plan of action for refugee protection and mixed migration:

> While refugees and asylum-seekers account for a relatively small portion of the global movement of people, they increasingly move from one country or continent to another alongside other people whose reasons for moving are different and not protection-related. More often than not, such movements are irregular, in the sense that they take place without the requisite documentation and frequently involve human smugglers and traffickers. The people who move in this manner often place their lives at risk, are obliged to travel in inhumane conditions and may be exposed to exploitation and abuse. States regard such movements as a threat to their sovereignty and security. It has become

imperative for the international community to address this phenomenon in a more coherent and comprehensive manner. States have assumed protection responsibilities for refugees under international instruments which it is in their collective interest to honour.

More specifically, steps must be taken to establish entry systems that are able to identify new arrivals with international protection needs and which provide appropriate and differentiated solutions for them, side by side with such other solutions as need to be pursued for other groups involved in mixed movements. The Office of the United Nations High Commissioner for Refugees is especially mindful of the need to ensure that the provision of protection and asylum to refugees and other people of concern to the Office does not compound the difficulties that States experience in controlling more generally the arrival and residence of foreign nationals and in combating international crime.

This paper sets out 10 key areas in which the Office has an interest and a potential role to play, and where the Office believe initiatives are called for and could make a positive impact. The Plan of Action provided in the paper is especially relevant to situations where refugees are at risk of refoulement, human rights violations and hazardous onward movements:

1. Cooperation among key partners
2. Data collection and analysis
3. Protection-sensitive entry systems
4. Reception arrangements
5. Mechanisms for profiling and referral
6. Differentiated processes and procedures
7. Solutions for refugees
8. Addressing secondary movements
9. Return arrangements for non-refugees and alternative migration options
10. Information strategy

Source: www.unhcr.org/4688b4af2.html

Recommended resources

Global Migration Group. *International Migration and Human Rights: Challenges and Opportunities on the Threshold of the 60th Anniversary of the Universal Declaration of Human Rights.* October 2008.

This guide is the collaborative result of the members of the Global Migration Group: the International Labour Organization, the International Organization for Migration,

the Office of the United Nations High Commissioner for Human Rights, the United Nations Conference on Trade and Development, the Department of Economic and Social Affairs of the Secretariat, the United Nations Development Programme, the United Nations Educational, Scientific and Cultural Organization, the United Nations Population Fund, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Institute for Training and Research, the United Nations Office on Drugs and Crime and the World Bank.

International Labour Office. *The Asylum-Migration Nexus: Refugee Protection and Migration Perspectives from ILO.* 2001.

This paper is intended as a contribution to the discussion of the nexus between refugee and migration issues. It is presented from the perspective of a standard-based international organization committed to upholding protection of human rights of migrant workers and members of their families defined in International Labour Organization and other international norms.

www.unhcr.org/refworld/topic,4565c2251a,470a33e22,3f33797e6,0.html

International Organization for Migration. *Glossary on Migration.*

The International Organization for Migration Glossary on Migration serves as a guide to the terms and concepts in the area of migration, in an effort to provide a useful tool for the furtherance of international cooperation and the common understanding of migration issues.

http://publications.iom.int/bookstore/indexphp?main_page=product_info&cPath=2_8&products_id=198

ECRE European Council on Refugees and Exiles, December 2007, Defending Refugees' Access to Protection in Europe

This report assesses the access of migrants, including refugees, to protection in Europe. It addresses issues including:

- Management of external borders
- Refugee and human rights law
- Carrier sanctions
- Immigration and airport liaison officers
- Anti-smuggling measures
- Interception at sea

The report also offers practical recommendations in relation to States actions and policies in these and other respects.

www.ecre.org/files/Access.pdf

Mole, Nuala. *Asylum and the European Convention on Human Rights.* Council of Europe, 2007.

Political upheavals, economic reforms, social instability and civil war have all been factors contributing to changes in the mixed flows of migrants both to and within Europe. Many of those in need of international protection are forced to seek it in Europe and the new member States of the enlarged Council of Europe are now also experiencing the arrival of asylum-seekers.

This revised edition considers the substantial body of case law of the European Court of Human Rights which has examined the compatibility of the Convention with measures taken by States in relation to all aspects of the asylum process. It also observes the role of subsidiary protection offered by the Strasbourg organs in protecting those at risk of prohibited treatment. In addition, the study considers the increasingly relevant provisions of European Union law developments in the field, as well as measures taken in the context of terrorist threats—both of which have had a significant impact on the practical circumstances and law on refugees and asylum-seekers.

http://book.coe.int/EN/ficheouvragephp?PAGEID=36&lang=EN&produit_aliasid=2218

8.11 Non-refoulement

A key consideration to keep in mind in investigating or prosecuting a migrant smuggling case is the principle of non-refoulement.

There are two key points to bear in mind in this respect. Firstly, article 19 of the Smuggling of Migrants Protocol notes that the fact of having been smuggled cannot jeopardize a person's asylum claim. Secondly, the fact that a smuggled migrant makes a legitimate asylum claim and is correctly accorded the status of refugee does not make the actions of the smuggler of migrants any less criminal where he or she has smuggled the person for financial or material gain.

The principle of non-refoulement means that a State cannot send a person back to a country where his or her life is in peril if there are substantial grounds for believing that he or she would be in danger of being subject to other elementary human rights violations (such as torture or cruel, inhuman or degrading treatment or punishment). In respect of this principle, States are also obligated to examine whether such a risk could be posed to the migrant through "chain deportation" (that is, the further deportation of a migrant to another State or other States from the country to which they are sent).

Non-refoulement is a fundamental principle of international law. The principle of non-refoulement is laid down in the Convention relating to the Status of Refugees[3] and other human rights instruments. According to the Convention:

> No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. (article 33, paragraph 1)

This principle cannot be "claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country" (article 33, paragraph 2).

Article 19 of the Smuggling of Migrants Protocol states that the Protocol shall not affect any other rights, obligations or responsibilities of States and individuals under international law, including humanitarian, human rights and refugee laws. This means that the illegal entry of a person shall not be detrimental to their claim for asylum and the Protocol is not to be read in a way that is discriminatory to the smuggled migrants.

It must be remembered that while some smuggled migrants make legitimate claims of asylum and are correctly accorded the status of refugees, this does not make the actions of the smugglers

[3] United Nations, *Treaty Series*, vol. 189, No. 2545.

of migrants any less criminal where they are smuggling the migrants for their own financial gain. In fact, their taking financial advantage of persons who are in vulnerable positions could be considered an aggravating circumstance.

Recommended resources

Office of the United Nations High Commissioner for Refugees. *Refugee Protection and Human Trafficking: Selected Legal Reference Materials.* First edition. 2008.

www.unhcr.org/4986fd6b2.html

1951 Convention and 1967 Protocol relating to the Status of Refugees

www.unhcr.org/protect/PROTECTION/3b66c2aa10.pdf

European Union. Council Resolution of 20 June 1995 on minimum guarantees for asylum procedures. *Official Journal C 274,* 19.09.1996.

The objection of this resolution is to establish minimum guarantees for asylum procedures in European Union member States in compliance with the principles of the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33103_en.htm

Platform for International Cooperation on Undocumented Migration. *Undocumented and Seriously Ill: Residence Permits for Medical Reasons in Europe*. Brussels, 2009.

www.medimmigrant.be/uploads/Undocumented%20and%20Seriously%20Ill%20Report%20Picum.pdf

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Tool 9
Prevention of the smuggling of migrants

9

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Contents

Overview 1

9.1 Methods of prevention in the Smuggling of Migrants Protocol 3

9.2 Addressing root causes of the smuggling of migrants 5

9.3 Providing alternatives: regular migration 10

9.4 Creative approaches to combating the smuggling of migrants 14

9.5 Measures relating to security and control of documents 17

9.6 Raising awareness among potential smuggled migrants 22

9.7 Designing a communication strategy to raise awareness 25

9.8 Use of standardized data collection instruments 29

9.9 Role of the media in raising awareness 32

9.10 Role of the police in raising awareness 35

Overview

Tool 9, entitled "Prevention of the smuggling of migrants", provides an overview of actions to prevent the smuggling of migrants. The first five sections are divided as follows:

9.1 outlines the methods of prevention contained in the Smuggling of Migrants Protocol;

9.2 emphasizes the need to address the root causes of the smuggling of migrants as a necessary part of a comprehensive and long-term approach to preventing the phenomenon;

9.3 discusses the provision of regular migration;

9.4 showcases some creative approaches that have been formulated to respond to the smuggling of migrants;

9.5 discusses the measures required by the Smuggling of Migrants Protocol to secure and control documents.

The final five sections in the chapter are concerned with the role of awareness-raising as a means of preventing migrants falling into the hands of smugglers. These sections are divided as follows:

9.6 offers some examples of awareness-raising campaigns;

9.7 offers guidance on designing a communication strategy to raise awareness;

9.8 stresses the role that standardized data collection can play in strengthening response to the smuggling of migrants;

9.9 offers some guidance to journalists and media outlets in fulfilling their important role in preventing the smuggling of migrants;

9.10 highlights the important role of the police in reducing the crime of the smuggling of migrants by offering guidance on crime prevention publicity campaigns.

9.1 Methods of prevention in the Smuggling of Migrants Protocol

Law enforcement measures to combat the smuggling of migrants are addressed in Tool 6 and Tool 7. However, it must be understood that law enforcement measures alone cannot prevent the smuggling of migrants. Increased border control measures may have the result of diverting routes elsewhere, thereby increasing the likelihood of smugglers of migrants using more risky routes that may cause migrants to lose their lives.

If migrants are simply returned to where they came from without consideration for the wider issues involved in their decision to migrate, they may simply attempt another journey. There are important push and pull factors that cause a person to become a smuggled migrant and all must be addressed in order for the smuggling of migrants to be prevented.

By virtue of the Smuggling of Migrants Protocol, States parties are required:

- To strengthen border controls (article 11, paragraph 1)
- To adopt measures to require commercial transportation carriers to ascertain that all passengers have the required travel documents, and sanctions for failure to do so (article 11, paragraphs 3 and 4)
- To ensure that travel and identity documents are of such quality that they cannot be altered or misused (article 12, paragraph *(a)*)
- To ensure the security of travel documents so that they are not unlawfully issued (article 12, paragraph *(b)*)
- To provide or strengthen training to prevent the smuggling of migrants and ensure humane treatment of migrants who have been smuggled (article 14, paragraph 1)
- To provide or strengthen public information campaigns on the criminal nature and dangers of the smuggling of migrants (article 15, paragraphs 1 and 2)
- To promote or strengthen development programmes to combat the root causes of the smuggling of migrants (article 15, paragraph 3).

Recommended resources

Organized Crime Convention and Smuggling of Migrants Protocol

The texts of the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, are available from www.unodc.org.

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (*Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The *Guides* lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The Guides have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

9.2 Addressing root causes of the smuggling of migrants

Smuggling of Migrants Protocol

Article 15, paragraph 3

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

For more information on the root causes of migration, see Tool 1.2.

From a criminal justice perspective, the challenge is to dismantle networks involved in the smuggling of migrants and address the conditions in which they can flourish, while protecting the rights of smuggled migrants. Unless the organized criminal groups that smuggle migrants are dismantled, smugglers of migrants will continue to operate and will quickly adapt their methods and routes to changing circumstances such as improved border controls or changes in visa regimes. Similarly, efforts that are focused primarily on strengthening border controls often lead to an increase in demand for assistance in entering countries illegally. This highlights a key need to complement border controls by increasing law enforcement efforts to dismantle networks involved in the smuggling of migrants in countries of origin and in transit countries and by enhancing international law enforcement cooperation between countries of destination, transit countries and countries of origin.

Recognizing that a root cause of the smuggling of migrants is the desire of people to migrate away from conditions such as poverty or oppression in search of better lives, article 15, paragraph 3, of the Smuggling of Migrants Protocol requires the promotion or strengthening of development programmes and cooperation to address the socio-economic causes of the smuggling of migrants.

Many people risk their lives to migrate when there are few opportunities in their homeland. This signals that development programmes to support countries of origin are a necessary part of a long-term approach to stopping the smuggling of migrants. In the short and medium term, migration should be managed in a way that supports this long-term goal.

Effective and complementary approaches to migration and development can mean that migration policies have positive impacts on development, and vice versa. Significant gains in human development can be achieved by lowering barriers to movement and improving the treatment of those who move, to the benefit of migrants, communities and countries.

Migration policy reform may include opening up existing entry channels so that more people can emigrate; ensuring basic rights for migrants; lowering the cost of migration; finding solutions that benefit both destination communities and the migrants they receive; making it easier for people to move within their own countries; and including migration in national development strategies—all have important and complementary contributions to make to human development.

Source: United Nations Development Programme. *Human Development Report 2009. Overcoming barriers: Human mobility and Development*. New York, 2009. Available from http://hdr.undp.org/en/reports/global/hdr2009/.

Reducing supply and demand

There are many push and pull factors driving the smuggling of migrants. While these remain, so will the smuggling of migrants. Approaches are needed to reduce supply and demand for smuggling services.

Supply reduction: focusing on the smugglers

Some potential strategies to reduce the availability of services related to the smuggling of migrants include:

- Maintenance of interdiction efforts: these result in the prosecution and imprisonment of some smugglers of migrants, including high-level organizers. Low development can mean that people are lured into criminal smuggling groups. Prosecuting the people at the lower levels of such groups is a start, but there are many more people who can step into their roles. Key to combating the smuggling of migrants is dismantling the smuggling networks and bringing their organizers to justice
- Harsher penalties for smugglers of migrants as a deterrent effect
- Disruption of onshore and offshore syndicates: this is best achieved by targeting the higher-level organizers of the syndicates, yet this is also the most difficult task for law enforcers. The increasing fluidity of networks means that the structure will not crumble just because law enforcers intercept a key player. Breaking the networks will remain an ongoing task
- Increasing international cooperation for successful action against offshore criminals

Demand reduction: focusing on the migrants in countries of origin and people in destination countries seeking cheap labour

Firstly, it is necessary to understand the many factors that drive people to seek to migrate:

- Push factors include poverty, lack of opportunities, persecution or civil unrest, and ecological degradation in source countries
- Pull factors include greater perceived economic opportunity, lifestyle, and political stability in countries of destination

If people cannot migrate legally, and if they are determined or desperate enough, they will pay a people smuggler. The above push and pull factors are strong motivators, and their endemic nature in certain countries and regions of the world means that they are difficult to combat. However, some initiatives have tried to redress these factors. For instance, there

have been numerous programmes to provide aid to source countries to address some of the root causes of illegal migration. These have included aid to facilitate economic development and provision of training and education in local communities to reduce disadvantages.

Source: Tailby, Rebecca. *People Smuggling: Recent Trends and Changing Responses.* Paper presented at the 4th National Outlook Symposium on Crime in Australia, New Crimes or New Responses. Canberra: Australian Institute of Criminology, 2001. Available from www.aic.gov.au/events/aic%20upcoming%20events/2001/~/media/conferences/outlook4/tailby.ashx.

Promising practice

Emigration of Fijians to highly skilled jobs in Australia

There is a range of evidence about the positive impacts of migration on human development through, for example, increased household income and improved access to education and health services. There is further evidence that migration can empower traditionally disadvantaged groups, in particular women. At the same time, risks to human development are also present where migration is a reaction to threats and denial of choice, and where regular opportunities for movement are constrained.

One example of the positive impact of migration opportunities on human development is the emigration of Fijians to highly skilled jobs in Australia. This has had the effect of providing incentives to pursue higher education in Fiji.

Source: United Nations Development Programme. *Human Development Report 2009. Overcoming barriers: Human mobility and Development.* New York, 2009. Available from http://hdr.undp.org/en/reports/global/hdr2009.

Recommended resources

Commission of the European Communities. *Migration and development: some concrete orientations.* Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Brussels, 1 September 2005. COM(2005) 390.

The Commission has put forward some new initiatives to improve the impact of migration on development. It has developed a package of practical measures based on various themes, namely:

- Making remittances easier
- Enhancing the role of diasporas in the member States as actors of home country development
- Encouraging circular migration and return to the country of origin
- Mitigating the adverse effects of brain drain

To read the complete Communication, visit http://europa.eu/legislation_summaries/development/sectoral_development_policies/l14166_en.htm

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), Risk Analysis Unit. *The impact of the global economic crisis on illegal migration to the EU.* Warsaw, 2009.

www.frontex.europa.eu/gfx/frontex/files/justyna/frontex_raport.pdf

High-Level Dialogue on Migration and Development

A High-Level Dialogue on International Migration and Development took place in New York on 14 and 15 September 2006 during the sixty-first session of the General Assembly. The purpose of the High-Level Dialogue was discussing the multidimensional aspects of international migration and development in order to identify appropriate ways and means to maximize its development benefits and minimize its negative impacts. Additionally, the High-Level Dialogue focused on policy issues, including the challenge of achieving internationally agreed development goals, including the Millennium Development Goals.

More information about the High-Level Dialogue is available at www.un.org/esa/population/migration/hld/index.html

Migration Policy Institute. *The Global Remittances Guide.*

Remittances are one of the most tangible links between migration and development. Officially recorded remittance flows totalled over 280 billion United States dollars worldwide in 2006; nearly three quarters were sent to developing countries. In 22 countries, remittances were equal to more than 10 per cent of gross domestic product (GDP) in 2006; in six countries they were equal to more than 20 per cent of GDP.

The *Global Remittances Guide* shows worldwide remittance trends and patterns in terms of the volume and share of GDP.

www.migrationinformation.org/DataHub/remittances.cfm

Agunias, Dovelyn, ed. *Closing the Distance: How Governments Strengthen Ties with Their Diasporas*. Washington, D.C.: Migration Policy Institute, 2009.

This book explores how Governments of developing countries have institutionalized ties with emigrants and their descendents. It provides information on 45 diaspora-engaging institutions in 30 developing countries, exploring their activities and objectives. It also provides important practitioner insights from Mali, Mexico and the Philippines.

Agunias, Dovelyn, and Newland, Kathleen. *How can circular migration and sustainable return serve as development tools?* Background paper for the Global Forum on Migration and Development. Washington, D.C.: Migration Policy Institute, 2007. Available from www.migrationpolicy.org/research/MPI-GlobalForum_circularmigration.pdf.

Newland, Kathleen. *Can migrants, countries of origin and countries of destination all win from circular migration?* Paper prepared for the Civil Society Day of the Global Forum

on Migration and Development. Washington, D.C.: Migration Policy Institute, 2007. Available from www.migrationpolicy.org/research/MPI-GlobalForum_circularmigration_CivilSocietyDay.pdf.

Newland, Kathleen, and others. *Learning by Doing: Experiences of Circular Migration, Insight, Program on Migrants, Migration, and Development.* Washington, D.C.: Migration Policy Institute, 2008. Available from www.migrationpolicy.org/pubs/Insight-IGC-Sept08.pdf.

Increasingly, policymakers are considering whether circular migration could improve the likelihood that global mobility gains will be shared by countries of origin and destination for migration, as well as by migrants themselves. This paper examines the record of circular migration, both where it has arisen naturally and where Governments have taken action to encourage it.

Ratha, Dilip. *Leveraging Remittances for Development*, Policy Brief, Program on Migrants, Migration, and Development. Washington, D.C.: Migration Policy Institute, 2007. Available from www.migrationpolicy.org/pubs/MigDevPB_062507.pdf.

In 2006, recorded remittances sent home by migrants from developing countries reached $206 billion, more than double the level in 2001. The true scale of remittances, including unrecorded flows through formal and informal channels, is believed to be even larger. The paper looks at the growing importance of remittances and their impact on development and lays out a four-part international remittances agenda that includes monitoring, analysis and projection; retail payment systems; financial access of individuals or households; and leveraging remittances for capital market access by financial institutions or countries.

9.3 Providing alternatives: regular migration

Alternatives to irregular migration include the provision not only of opportunities to remain at home, but also of opportunities to migrate legally. Several models for this have been offered. It must be stressed that providing legal migration opportunities is not intended in place of approaches aimed at combating the smuggling of migrants, but as a part of a cohesive approach that aims to address the root causes of the smuggling of migrants, protect individuals and communities in countries of origin, transit countries and countries of destination, and bring smugglers of migrants to justice.

Promising practices

Commission of the European Communities. *Policy plan on legal migration.* Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. Brussels, 21 December 2005. COM(2005) 669.

The Commission proposes a series of legislative and operational initiatives on legal migration, in four complementary policy areas. Most notably, it recommends drawing up a framework directive to safeguard the rights of all third-country nationals in legal employment. It also plans four complementary directives to cover the entry and residence of certain categories of third-country nationals, namely highly qualified workers, seasonal workers, intra-corporate transferees and remunerated trainees.

To read the complete Communication, visit http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l14507_en.htm.

EURES: the European Employment and Job Mobility Network

EURES contributes to creating a European labour market accessible to all through the international, interregional and cross-border exchange of job vacancies and applications and the exchange of information on living conditions and the gaining of qualifications.

http://europa.eu/legislation_summaries/employment_and_social_policy/community_employment_policies/c10527_en.htm

Regional Conference on Refugee Protection and International Migration in West Africa. Dakar, 13 and 14 November 2008

Enhancing legal migration: alternatives to dangerous irregular migration?

In recent years, irregular migration from West Africa has increased substantially and has become a major challenge for West African States. At the Regional Conference, it was generally accepted that the negative image of migrants, and of irregular migrants in particular, often leads to

negative perceptions and diminishing public and political support for both refugee protection and immigration policies. Combating stigma against irregular migrants in public discourse was therefore seen as an important element.

Legal migration within the Economic Community of West African States

Noting that increased legal labour migration opportunities could assist in diminishing irregular migration, participants discussed the expansion of such opportunities in and outside West Africa, particularly through increased use of existing regional frameworks and processes such as the free movement protocols of the European Community of West African States (ECOWAS). It was generally agreed that the ECOWAS framework provides a range of possibilities for secure and legal regional migration that respects human rights and that these possibilities have not been sufficiently explored and need to be promoted.

Legal migration outside the ECOWAS region

Migration from West Africa to North Africa and Europe was also discussed and participants agreed on the need to foster and nurture mutually respectful and collaborative partnerships in order to share responsibilities between countries involved in or affected by migratory movements. While stressing the need for a common and coherent ECOWAS policy with regard to the European Union (EU), participants urged the promotion of bilateral labour migration agreements and memorandums of understanding in order to facilitate lawful migration between West African countries and EU member States.

Participants mentioned, as an example of good practice, the EU-funded regional migration information centre in Mali (CIGEM) and the migration information centre in Cape Verde (CAMPO).

Conclusions of the Regional Conference

The conclusions of the Regional Conference read as follows:

- ECOWAS member States should harmonize their national migration legislations and policies.
- ECOWAS institutions should develop mechanisms to facilitate the recognition of the diplomas and qualifications of labour migrants in all ECOWAS member States.
- National structures involved in legal migration issues should reinforce their coordination and information-sharing mechanisms. Relationships with actors such as trade unions and chambers of commerce in countries of origin and countries of destination should be expanded, with a view to ensuring equality of treatment between migrant workers and citizens.
- Dialogue and cooperation between countries of origin, transit and destination should be strengthened, and bilateral agreements be promoted in order to facilitate legal migration.
- ECOWAS member States, with the support of relevant actors, should establish migration information centres to inform migrants about legal migration opportunities as well as working and living conditions in countries of destination.
- ECOWAS member States should take the necessary steps to prevent brain drain in countries of origin and ensure that low-skilled workers benefit from legal labour migration schemes.

- ECOWAS member States should involve social partners, civil society organizations and other key actors (such as mothers and local witch doctors) in the design and implementation of intraregional labour migration policies.

For further information on the Regional Conference and its outcomes, visit www.unhcr.org/4a27be466.html

Temporary work visas in Spain

In 2007, the Governments of Senegal and Spain developed a programme under which legal passage and a one-year work permit was granted to selected people from Senegal, in a bid to deter them from risking their lives at sea.

Burnett, Victoria. To curb illegal migration, Spain offers a legal route. *The New York Times*, 11 August 2007. Available from www.nytimes.com/2007/08/11/world/europe/11spain.html?_r=1&fta=y.

For further information, visit www.workpermit.com/news/2006_10_11/eu/spain_senegal_promote_migration_policy.htm

Recommended resources

United Nations Development Programme. *Human Development Report 2009.*

"Overcoming barriers: Human mobility and Development". New York, 2009.

In its recent human development report on human mobility and development, the United Nations Development Programme (UNDP) recommends:

Expanding schemes for seasonal work in sectors such as agriculture and tourism. Such schemes have already proved successful in various countries. Good practice suggests that this intervention should involve unions and employers, together with the Governments of destination and source countries, particularly in designing and implementing basic wage guarantees, health and safety standards and provisions for repeat visits.

Increasing the number of visas for low-skilled people, making this conditional on local demand. Experience suggests that good practices here include: ensuring immigrants have the right to change employers (known as employer portability), offering immigrants the right to apply to extend their stay and outlining pathways to eventual permanent residence, making provisions that facilitate return trips during the visa period and allowing the transfer of accumulated social security benefits.

http://hdr.undp.org/en/reports/global/hdr2009/

International Labour Office, International Organization for Migration and Organization for Security and Co-operation in Europe. *Handbook on Establishing Effective Labour Migration Policies in Countries of Origin and Destination.* Geneva, 2006.

The aim of the *Handbook* is to assist States in their efforts to develop new policy approaches, solutions and practical measures for better management of labour migration in countries of origin and destination.

It was prepared primarily for use by decision makers and practitioners in the member States of the Organization for Security and Co-operation in Europe (OSCE) and countries served by the International Organization for Migration (IOM) and International Labour Organization (ILO). It analyses effective policies and practices and draws upon examples from participating OSCE member States as well as other countries that have considerable experience in this field.

Available at www.osce.org/publications/eea/2006/05/19187_620_en.pdf.

Southern Africa Migration Group

One of the critical challenges facing Africa is how to harness the potential of internal and international migration in the interests of development. The Southern African Migration Programme (SAMP) is an international network of organizations that was founded in 1996 to promote awareness of links between migration and development in the Southern African Development Community. SAMP conducts applied research on migration and development issues, provides policy advice and expertise, offers training in migration policy and management, and conducts public education campaigns on migration-related issues.

www.queensu.ca/samp

Demetrios G. Papademetriou. *The Global Struggle with Illegal Migration: No End in Sight,* 1 September 2005. Available from www.migrationinformation.org/Usfocus/display.cfm?ID=336.

For the integrated approach that is needed to respond to challenges of irregular migration:

- Governments can widen and deepen legal immigration channels
- Governments can systemically and regularly review internal controls with an eye to reducing opportunities for unauthorized immigrants to gain footholds
- Governments can entice irregular immigrants to make themselves known to authorities
- A state's border control stance can be reviewed frequently with an eye to continuing only investments that make sense and see results

9.4 Creative approaches to combating the smuggling of migrants

Complicated problems often require innovative solutions. In March 2006, the International Centre for Migration Policy Development (ICMPD) convened an international workshop in Vienna, calling for papers on new, alternative and innovative approaches to the management of migration. Below is a selection of some of the 11 innovative approaches put forward at the workshop.

Temporary migration programmes

Highlighting the potential of temporary migration programmes, this approach identifies prerequisites that need to be in place to improve their effectiveness:

- Clear guidelines on the length of contracts
- Accurate information to potential migrants on the terms of their temporary migration
- Equal treatment in the labour market
- Job protection for nationals
- Regulation of recruitment agents
- Rigid inspections and employer sanctions
- Portable pensions and savings schemes to enable returns

Temporary employment migration with enhanced options for return migrants

Here, a system of temporary employment migration is proposed, with enhanced options for return migrants to become economically active in their countries of origin. This system involves admission of temporary workers from selected developing countries for up to seven years, complemented by free education and occupational training and a financial return incentive. This would be capital accumulated over the working period in the host country through social security savings, pension savings and a share of development aid money.

Additionally, there would be schemes for facilitating the investment of the return premium through, for instance, business start-up training, tax breaks and microcredit schemes.

New forms of mobility and circular migration as positive factors for co-development

Here it is argued that new forms of mobility and circular migration can be positive factors for co-development. This approach proposes that investment in the community and migrant networks enhances the ability for migrants to become development agents. Capacity-building and training can help to identify migrants who can make a positive difference. Institutions in home countries must be strengthened to make the most of the skills of returning migrants.

Open borders, coupled with an internal control system of close monitoring

The argument for this approach is that stronger control of external borders has failed to prevent unwanted migration and has resulted in several negative consequences for migrants who are forced to overcome such barriers (for example, turning to smugglers). It is argued that borders should be opened and monitoring should be increased so that exclusion would only apply where there are strong reasons for it (such as security). This, it is argued, would reduce the demand for smuggling of migrants.

Undercutting smugglers by selling legal entry permits

One of the innovative approaches to combating the smuggling of migrants acknowledges that it has evolved into a sophisticated service industry that should be undercut. The suggestion here is that Governments should sell temporary visas to the people usually targeted by smugglers of migrants and the visas should be priced to compete with the rates of those smugglers. One-third of the visa fee could then be returned to immigrants when they departed the country, another third would go to selected development programmes in the country of origin, and the other third would be used to contribute to social security schemes in the country of destination. Holders of temporary visas would be free to purchase another one if they did not break the rules of the previous one, which would provide an incentive not to overstay.

Source: Jandl, Michael. Innovative concepts for alternative migration policies, IMISCOE Policy Brief, No. 1. Amsterdam: IMISCOE, 2006. Available from www.imiscoe.org/publications/policybriefs/documents/PB1-Jandl.pdf.

Recommended resources

International Centre for Migration Policy Development. *Innovative Concepts for Alternative Migration Policies: Conference Report on the ICMPD/IMISCOE Workshop, Vienna 24-25 March 2006. Vienna, 2006.*

www.imiscoe.org/publications/workingpapers/documents/ICMPD_Conference_Report_2006_04_26.pdf

Heckmann, Friedrich. *Towards a better understanding of human smuggling,* IMISCOE Policy Brief, No. 5. Amsterdam: IMISCOE, 2007. Available from www.imiscoe.org/publications/policybriefs/documents/PB5-Heckman.pdf.

This policy brief reports on some key results of an IMISCOE study into the phenomenon of smuggling of migrants. Unique data was collected that enabled the researchers to gain more insight into trends in smuggling and smuggling processes. This policy brief gives insight into the results by focusing on the process of the smuggling of migrants and presents key factors in combating both the phenomenon and the dramatically increasing death toll of smuggled migrants.

Jandl, Michael, ed. *Innovative Concepts for Alternative Migration Policies: Ten Innovative Approaches to the Challenges of Migration in the 21st Century.* Amsterdam: Amsterdam University Press, 2007.

The participants of the 2006 ICMPD workshop were asked to produce brief overviews of their innovative policy concepts, which would then be subjected to close scrutiny and criticism by their colleagues and migration policymakers during the two-day workshop sessions.

Using the critique and suggestions raised at the workshop, the authors were asked to revise and refine their papers once again before the full publication was submitted to the IMISCOE Editorial Committee for quality review. This publication is one of the main outcomes of the exercise.

Jandl, Michael. *Innovative concepts for alternative migration policies,* IMISCOE Policy Brief, No. 1. Amsterdam: IMISCOE, 2006. Available from www.imiscoe.org/publications/policybriefs/documents/PB1-Jandl.pdf.

This policy brief is directed at researchers and policymakers at all levels. It is divided into two parts: the first identifies common themes and principles in the design of alternative migration policies that run across the proposals presented at the ICMPD workshop held in Vienna in 2006, and the second part provides a short overview of the cutting-edge ideas presented by the participants.

Kolb, Holger. *Entrance fees for migrants: A fair and efficient proposal for immigration policy reform,* IMISCOE Policy Brief, No. 11. Amsterdam: IMISCOE, 2008. Available from www.imiscoe.org/publications/policybriefs/documents/PB11-Entrancefeesformigrants-Kolb.pdf.

This policy brief proposes a fee-based entrance system to control migration flows. By integrating economic and migration theory, the proposal observes that current migration policies are unfair and inefficient. A fee-based entrance system could control migration flows while satisfying labour market demands, meeting States' requirements and respecting human rights.

Van Liempt, Ilse. *Inside perspectives on the process of human smuggling*, IMISCOE Policy Brief, No. 3. Amsterdam: IMISCOE, 2007. Available from www.imiscoe.org/publications/policybriefs/documents/PB3-Liempt.pdf.

This policy brief is of interest to policymakers who deal with irregular migration and asylum. The brief presents an alternative perspective from which to take into account social perceptions of the smuggling of migrants, to pay more attention to diversity within the processes of the smuggling of migrants and to accommodate the complex stories that are part of the process of the smuggling of migrants.

9.5 Measures relating to security and control of documents

For information on cooperation with respect to travel and identity documents, see Tools 6.13 and 7.13.

Smuggling of Migrants Protocol

Article 12

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 12 requires States parties to issue travel documents that are difficult to falsify or obtain improperly and article 13 seeks to decrease the risk of misuse and increase the probability of detection of fraudulent documents by requiring States parties to verify within a reasonable time whether a document purporting to have been issued by them is genuine and valid or not.

Use of falsified travel documents in the context of the smuggling of migrants

Improved management of external borders has led to the increased use of falsified documents. The production or procurement of falsified documents is an illicit market where organized criminal groups involved in the facilitation of illegal immigration can make an extra profit. Travel document falsifications range from alterations of personal data and substitution of photos to sophisticated and high-quality reproductions of entire documents.

Although travel documents, such as passports, national identification cards, visas and residence or work permits, are the most commonly falsified travel documents, a number of other documents are targeted by organized criminal groups. Documents needed to support a bogus application for a business or student visa are frequently falsified. These documents may include registrations for a school or study programme, supporting letters from an employer or an invitation from a company within the destination country or region.

Other documentation, such as seaman books and joining letters from shipping companies and the merchant navy, is also used to allow illegal immigrants to enter or transit the EU without visas.

Source: UNODC

Legislative considerations

Article 12 of the Protocol requires measures to ensure the adequacy of the quality and integrity and security of documents such as passports. This includes such measures as technical elements to make documents more difficult to falsify, forge or alter; and administrative and security elements to protect the production and issuance process against corruption, theft or other means of diverting documents. These do not entail direct legislative obligations, except possibly to the extent that the formats of documents such as passports are prescribed by legislation that would have to be amended to raise standards or legally designate the enhanced versions as formally valid documents. Indirectly, additional supplementary offences to deal with theft, falsification and other misconduct in relation to travel or identity documents could be considered if more general offences do not already apply.

The establishment of specific formats or the setting or amendment of technical standards for the production of documents such as passports may be a legislative matter in some States. In such cases, legislators will generally need to consult technical experts, either domestically or in other States parties, to determine what basic standards are feasible and how they should be formulated.

Understanding technologies such as biometrics and the use of documents containing electronically stored information, for example, will be essential to the drafting of legal standards requiring the use of such technologies. Implementing the requirement to verify travel or identity documents will generally not require legislation, since virtually all States already do this on request, but may require resources or administrative changes to permit the process to be completed in the relatively short time frames envisaged by the Protocol.

Technology to secure and control documents

Several kinds of technology that are new or in the process of being developed offer considerable potential for the creation of documents that identify individuals in a unique manner, can be rapidly and accurately read by machines and are difficult to falsify because they rely on information stored in a database out of the reach of offenders, rather than relying on information provided in the document itself. One concern raised during the negotiation of article 12 of the Smuggling of Migrants Protocol was the cost and technical problems likely to be encountered by developing countries seeking to implement such systems.

The development of systems and technologies that minimize the amount of sophisticated maintenance and high-technology infrastructure needed to support and maintain such systems will be critical to the success of their deployment in developing countries and, in some cases, the technical assistance to be provided pursuant to article 30 of the Organized Crime Convention.

Promising practices

Airline Liaison Officers network, Australia

The Airline Liaison Officers (ALO) network is an important part of the strategy in place to secure Australia's borders. ALOs are specialist document examiners who work closely with airline, immigration and airport staff at major overseas airports to prevent travel to Australia by potentially inadmissible passengers and to facilitate the travel of genuine passengers.

ALOs assist airline and airport staff to check for irregularities in passengers' documents. They also provide training to host nation immigration authorities and airline and airport security staff on Australia's entry requirements. Although airlines decide whether to allow passengers to board their intended flight, these decisions are often made following ALO advice regarding the authenticity of passengers' travel documents.

By maintaining a visible presence at international airports, ALOs act as a deterrent to smugglers of migrants and passengers who are inadequately documented. As part of their work to combat the smuggling of migrants and illegal migration, ALOs and their counterparts from other Governments participate in short, multinational exercises at airports overseas. Their aim is to prevent travel by passengers whose documents contain irregularities.

The ALO programme is a flexible initiative generally involving placements of officers for three to six months. Besides maintaining a number of formal placements, the ALO programme has the capacity to respond at short notice, sending officers to undertake traditional or modified ALO duties for a brief period in areas of concern.

www.immi.gov.au/managing-australias-borders/border-security/illegal-entry/combat.htm

False and Authentic Documents system, European Union

The False and Authentic Documents (FADO) system makes it possible to quickly verify documents and allows relevant law enforcement or immigration authorities in other participating countries to be notified immediately when misuse of a document or use of a fraudulent document is detected.

http://ec.europa.eu/justice_home/fsj/freetravel/documents/fsj_freetravel_documents_en.htm

Recommended resources

Bali Process Workshop on Enabling Electronic Authentication of Travel Document Information, Wellington, 20 to 22 August 2007

This Bali Process workshop aimed to provide participants with detailed information on systems such as the Asia-Pacific Economic Cooperation (APEC) Regional Movement Alert System and the International Criminal Police Organization (INTERPOL) Stolen and Lost Travel Documents database. The workshop also aimed to provide detailed information on memorandums of understanding and legal frameworks for linking border management and passport information systems domestically and internationally.

Documents, presentations and reports from the workshop are available at www.baliprocess.net/index.asp?pageID=2145832562.

International Organization for Migration. *Passport Examination Procedure Manual.* Geneva, 2009.

The *Passport Examination Procedure Manual* has been translated into six languages and is being used by relevant ministries and agencies around the globe. The *Manual* addresses travel document/passport examination procedure in a logical order, providing practical information on every step of the examination process. The book is divided into nine sections: the first eight sections represent each of the eight steps of the examination process and the last section is a glossary of security features. The book describes a generic procedure, with each of its eight steps linked to the letters of the acronym FALSEDOC to make them easy to remember. This procedure, when applied in real time, would take anywhere between 30 seconds and five minutes. At every step of the procedure, the manual anticipates questions and provides answers and advice.

The *Manual* is a training and reference tool for operational personnel, providing officers with guidance and direction to enable them to better screen travel identity documents and identify fraudulent documents more consistently and with greater confidence.

Even though this book will assist operational personnel in the process of identifying fraudulent documents, it is not designed to replace specialized personnel who are experts in the field of forensic document examination; hence it does not provide the in-depth forensic knowledge that would be required to prepare statements of evidence or other specialized information reports.

For more information, visit www.iom.int.

INTERPOL databases

INTERPOL provides all its member States with instant access to a wide range of criminal information through a variety of databases. This enables the global law enforcement community to connect seemingly unrelated pieces of data, thereby facilitating investigations and enhancing international police cooperation. The databases share the following features:

- Accessible through the I-24/7 secure police communications system
- Compliant with international standards
- Legally founded
- Technologically advanced
- Embedded with security features
- Flexible and can be customized

The I-24/7 Gateway to international police data provides access to INTERPOL databases through the I-24/7 Dashboard, a restricted-access Internet portal.

The Stolen and Lost Travel Documents database holds information on more than 16.7 million travel documents reported lost or stolen by 145 countries. This database enables

INTERPOL and other authorized law enforcement entities (such as immigration and border control officers) to ascertain the validity of a suspect travel document in seconds.

For more information about INTERPOL, visit www.interpol.int.

9.6 Raising awareness among potential smuggled migrants

Smuggling of Migrants Protocol

Article 15

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.

2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.

Paragraphs 1 and 2 of article 15 of the Protocol seek to target potential migrants and others involved in the smuggling of migrants using public information.

The drafters of this article sought to require measures to increase public awareness of the nature of the smuggling of migrants and the fact it involves organized criminal groups.

In addition to other awareness-raising measures, public information campaigns about the legislation used to establish the offences set forth in the Protocol and elements of the Convention in national law could be applied. This would serve to emphasize that the smuggling of migrants is a serious criminal activity, often harmful to the migrants themselves and with broader implications for community crime levels. Legislation in other areas may form a part of wider development programmes that include, for instance, legislative reforms to address problems of corruption and include elements of the rule of law that help to stabilize social and economic conditions.

Awareness-raising measures

As well as informing people vulnerable to being smuggled that the smuggling of migrants is a crime often committed by dangerous organized criminal groups, awareness should be raised of the risks posed by being smuggled, including the risk of dying or falling victim to trafficking in persons. Public information campaigns should also address basic human rights standards; and holistic approaches to awareness-raising should also seek to raise peoples' awareness of legal channels of migration.

Campaigns should be formulated in ways that will be understood by their target audience, using materials in appropriate language that are adapted and relevant to the people they are aimed at.

Awareness-raising campaigns can save lives and prevent people falling victim to serious crimes. Effective awareness-raising campaigns are often simple but creative. For instance, warning signs can be placed in multiple languages along well-known and popular smuggling routes and trails in land border areas to warn migrants of the dangers that lie ahead.

Public service announcements can be broadcast in appropriate languages in countries of origin to warn potential smuggled migrants of the dangers of being smuggled into specific countries.

Promising practices

Some initiatives that have tried to raise awareness about the dangers of the smuggling of migrants are described below.

Office of the United Nations High Commissioner for Refugees warns migrants against crossing the Gulf of Aden

The Office of the United Nations High Commissioner for Refugees (UNHCR) has led an advocacy campaign in Somalia to warn potential Somali and Ethiopian migrants about the dangers of crossing into Yemen. The campaign has taken place in Puntland and south-central Somalia, and has been extended to Ethiopia by IOM and UNHCR.

The campaign's three main messages are as follows:

- Crossing the Gulf of Aden is extremely dangerous
- Asylum-seekers are entitled to claim asylum in Puntland, where UNHCR offers support and protection
- Migrants have rights and should be treated with dignity

The campaign has made use of various media to get its messages across:

- In Puntland, 10,000 leaflets to be distributed through local non-governmental organizations were printed in Somali and three Ethiopian languages (Oromo, Amharic and Tigryna). Radio spots were also broadcast in Puntland
- In south-central Somalia, 5,000 leaflets were printed in Somali and distributed by UNHCR staff in Mogadishu and in Afgooye, where 300,000 internally displaced persons were living after fleeing violence in the capital. A full radio programme, including spots, interviews and a play, was broadcast on Radio Somaliweyn in Mogadishu

www.unhcr.org/487b44f92.html

Support to Migration Policy Development and Relevant Capacity Building in Armenia

This programme to support migration policy development and relevant capacity-building in Armenia aims at raising awareness among Armenians of the problems resulting from irregular migration, the opportunities available in Armenia and the assistance offered by the State.

More information is available at www.backtoarmenia.am.

Rebecca Blackwell. "Spain fights migration via Senegal ads." *USA Today*, 28 September 2007.

In 2007, a publicity campaign developed by the Senegalese authorities and IOM, in conjunction with a local advertising agency, produced radio and television commercials in Senegal's main language, Wolof.

The campaign, funded by the Government of Spain, involved popular Senegalese singer Youssou N'Dour, who told the audience "Don't risk your life for nothing. You are the future of Africa."

Also part of the campaign were full-page newspaper advertisements showing a boat overloaded with migrants and, below it, a wrecked empty vessel half-buried on the beach.

Recommended resource

United Nations Office on Drugs and Crime.

Affected for Life. Vienna, October 2009. Film.

This training film uses the testimonies of survivors of trafficking in persons from all over the world and reveals the hidden global nature of trafficking in persons. It also explains the difference between trafficking in persons and smuggling of migrants and the risks involved in both.

The film was produced as part of United Nations Office on Drugs and Crime (UNODC) technical assistance and is primarily for use in the delivery of training to criminal justice actors, but also more broadly as an awareness-raising tool for a wider audience.

More information about the film, and the film itself can be found at

www.unodc.org/unodc/en/human-trafficking/affected-for-life.html

9.7 Designing a communication strategy to raise awareness

The guidance offered below—derived from End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) resources—can be used as a checklist for designing a communication strategy.

Plan your communication strategy

In order to plan your communication strategy, you should:

- Evaluate the context: what is the issue?
- When you have knowledge of the issue, identify and prioritize needs for action
- Assess your capacities by listing the resources you have:
  - Financial resources (funds you have and fund-raising capacity)
  - Human resources (special skills, experience, relevant contacts)
  - Partners (local, national, international, Government, private sector)
  - Technical resources (material, equipment, documents)
  - Location (time and place are important factors in determining action)
  - Relationship with donors

By matching the needs and your resources, you can identify your priorities.

- Set specific goals
- Plan how to reach your goals with strategic planning of the communication:
  - Objective
  - Audience
  - Message
  - Media

Select your audience

If you have several target groups, remember that different target audiences have different specifications which need to be targeted differently.

You need to understand your target group in order to reach it in the most effective way. Get to know how the group functions, how it is organized, etc.

Cooperate with and involve your target group—messages can be better accepted when they are transmitted by peers.

Your message

Provide basic information on the issue so that your audience:

- Is aware that the problem exists
- Acquires general knowledge about the issue
- Finds some relevance to itself (your audience should understand how the issue relates to them)
- Knows what is being done, and what can be done to prevent it

To define your message, put your audience first. Information should be designed for them and should be clear, precise and relevant.

Stimulate your audience to act:

- Your message should not present an insurmountable problem; rather it should:
  - Present the role and responsibilities of your audience target group
  - Suggest answers to their questions about what they can do
  - Make practical recommendations
- Select appropriate media for your messages
- Your message must be based on reliable facts and should target a specific problem. If you do not present positive and clear propositions, your message is useless and your credibility is lost
- The way your message is perceived depends on how it is conveyed—consider your audience

Media

The choice of medium must be adaptable to the goal you have set, the message, the audience and your resources. Your message should be carefully prepared to be sharp and straightforward. Real examples and case studies stimulate interest. You should consider using:

- Direct communication: direct personal contact with your audience can be time consuming and limited in terms of scope, but can also be effective
- Mass media: newspapers, radio, television and the Internet:
  - Interviews
  - Reports on your activities
  - Videos produced on the issue
  - Documentation circulated on the Web

You can also present to the media material you have produced. Always have some material printed, displayed or ready to be screened so as not to miss an opportunity to raise the issue.

You could prepare information packs for journalists, containing carefully selected relevant information about the issue, your organization and a press release (your message to the press).

Produce your own material

Producing your own material can let you control and format the message and the information you want to convey. You need to decide how it will have the most impact on your target audience and how to reach your target group. You should consider using:

- Print media, as they:
  - Are most frequently used
  - Offer a range of materials
  - Allow detailed, accurate information (as a long text is not always read by everyone, you may want to combine a short, striking message with longer, detailed text)
  - Imply more active participation of your audience, as they have to read text
  - Can take the form of leaflets, brochures, posters, billboards, advertisement pages, inserts, reports, drawings, stickers, luggage tags, comics etc.
- Visual media (all visual media require careful ethical use; obtain consent before using images of people):
  - Video is a flexible medium for messages but it is costly, implies passive participation of the audience and requires an efficient channel of distribution (or it may be seen by very few people)
  - Videos can be screened through various channels of communication and in different places: on television; in cinema; on aeroplanes and other means of transportation such as buses and boats; and in places such as airports, hospitals, agencies, exhibitions, hotel lounges etc.
- Photos can support a message but cannot be used on their own without explanation
- Other communication media, including are drama, music, movies, petitions and new technologies such as the Internet and e-mail
- Diverse media (combine several media formats to increase the chances of reaching your audience: repetition and continuity will support the effort and help the audience memorize and understand the message)

Pilot

Communication strategies must consider the variables and must be tested. Testing can be small scale, as long as it is representative of the target audience and the conditions of dissemination of the message:

- Test the message: what is being said?
  - Does your audience understand the message properly? Do they remember it? Do they agree? Do they feel concerned? What reaction does it produce from them? Is this what you expected?
- Test the medium: is it relevant to the targeted audience?
- Test the channel: is it the best way to reach the targeted audience?

Review your communication strategy on the basis of feedback and comments to match it as closely as possible to your audience's requirements and retest it until you are satisfied.

Monitoring and evaluation

Monitoring is based on guidelines leading to the objective that you set out and include in your strategy from the outset. It takes place throughout the campaign and will be repeated after a certain time.

Evaluation is planned before the campaign starts. There are two types of evaluation that should be combined:

- Qualitative: Assess what people know about the subject, how they perceive it and what they feel about it. This could be done through questionnaires handed out to representative groups
- Quantitative: Set quantifiable indicators of your audience, of your objectives (i.e. percentage of the potential target reached, percentage of the population, number of airings, number of pamphlets distributed)

Source: The above strategy has been derived from ECPAT International's guidelines *Designing a Communication Strategy: the Achievements of ECPAT Italy's Campaign.*

A note on rapid response

Times of crisis, such as natural disasters, wars or conflicts, can make people particularly vulnerable to falling into the hands of criminals and can escalate demand for smuggling services as people need to flee their homes as a matter of urgency. With this in mind, it is sensible to be prepared to mount a rapid response to raise awareness of the dangers of the smuggling of migrants.

Recommended resource

ECPAT International. *Creating a Database as a Tool for Campaigning.*

ECPAT International. *Using Communication Media as a Tool for Campaigning.*

9.8 Use of standardized data collection instruments

In the same way that universally accepted and consistently applied definitions of the smuggling of migrants (as discussed in Tools 1.8 and 5.1) will help researchers generate accurate estimates of the frequency of the phenomenon and strengthen the response to it, standardized research instruments and methodologies make it possible to measure, compare and interpret data, across jurisdictions and over time, on the prevalence, nature and effects of the smuggling of migrants.

The smuggling of migrants is a transnational phenomenon that can only be overcome if all actors work together on the basis of sound information on how it evolves and how it is affected or not by various interventions.

There are several sources of data that can be used to learn about the smuggling of migrants.

Data sources that may be used to learn about the smuggling of migrants include interviews with people who have been smuggled, interviews with experts, police investigation reports and court records. Interviews with people who have been smuggled are difficult, but not impossible, to obtain. They tend to cooperate in interviews under one or more of the following conditions:

- When anonymity is guaranteed
- When the interviewer is a person who comes from the same community as them and, preferably, has also been smuggled but now has safe status
- When they expect help or are lonely
- Out of frustration with the smugglers
- After having achieved safe status
- For political reasons

Expert groups such as police, asylum and border authorities, social workers and supporting health services have detailed knowledge on irregular migration and the smuggling of migrants. Interviews with police investigators and lawyers who defend illegal migrants have proved to be particularly informative.

Court records are the best source of information for reconstructing the process of the smuggling of migrants as a whole and can be analysed for scientific purposes. In addition to court proceedings, records of the complete investigation process are documented in the court records and provide extremely useful material that often runs to several thousands of pages.

Whereas the above data sources provide information on the analysis of processes of the smuggling of migrants, societal trends in the smuggling of migrants may be estimated on the basis of apprehension and other statistics. Measuring irregular migration in general and smuggling of migrants in particular is intrinsically problematic, as it concerns mainly

undocumented and unobservable events. Statements about the quantitative extent of such phenomena tend to draw on statistics of observed events that are usually collected for administrative purposes (e.g. by the police and border guards) and are often incomplete.

Existing estimates are based on the extrapolation of data from other sources such as border apprehension figures, asylum applications and data on regularization. This leads to another problem—the lack of comparability in migration-related data. States have different methods and ways of counting. Although they cannot give an accurate picture of irregular migration and smuggling of migrants, they are the only usable indicators for changing trends and developments.

www.imiscoe.org/publications/policybriefs/documents/PB5-Heckman.pdf.

Source: Heckmann, Friedrich. *Towards a Better Understanding of Human Smuggling*, IMISCOE Policy Brief, No. 5. Amsterdam: IMISCOE, 2007.

Promising practices

Mexican Migration Project Databases

The Mexican Migration Project (MMP) was created in 1982 by an interdisciplinary team of researchers to further understanding of the complex process of Mexican migration to the United States.

The MMP124 Database is the result of an ongoing multidisciplinary study of Mexican migration to the United States. It contains data gathered since 1982 from surveys administered every year in Mexico and the United States. After surveys are completed in the field, the information contained therein is input, coded, examined and then separated into six primary data files, each providing a unique perspective of Mexican migrants, their families and their experiences.

The Mexican Migration Project's databases are accessible at:

http://mmp.opr.princeton.edu/databases/dataoverview-en.aspx

Migration Policy Institute. *Immigration Data Hub.*

The Data Hub of the Migration Policy Institute offers statistics, maps, country profiles and other data relevant to immigration around the world.

www.migrationinformation.org/DataHub

Migration Policy Institute, and Population Reference Bureau. *Immigration: Data Matters.* Washington, D.C. 2008.

The Population Reference Bureau and the Migration Policy Institute have published a guide to websites providing immigration data. The guide primarily focuses on the United States of America, but resources for international data are also included.

The guide can be downloaded at www.migrationpolicy.org/pubs/2008DataGuide.pdf.

Recommended resource

ECPAT International. *Creating a Database as a Tool for Campaigning.*

This tool offers advice on creating a database to use as a practical tool. Although the work of ECPAT relates to child protection, the lessons learnt and the steps offered in this publication can be extrapolated for other purposes. The publication works through the following steps:

1. Identify potential sources of information and select a focal person:
   - To prepare a strategy
   - To develop a method
   - To determine the type of information needed
   - To collect information
2. Work closely with various organizations:
   - In the country where the crime is committed
   - In the home country of the tourist
3. Follow the cases by:
   - Monitoring the investigation
   - Sharing the information
   - Completing the databank
4. Publicize the database by:
   - Communicating results
   - Using it as a tool

9.9 Role of the media in raising awareness

The media has a key role to play in preventing the smuggling of migrants. Reports of interceptions and prosecutions of smugglers can have a deterrent effect on criminal activities related to the smuggling of migrants and reports of rescues or failed smuggling attempts can deter people from falling into the hands of smugglers of migrants.

However, when reporting in the media of the smuggling of migrants is not responsible, it can encourage smuggling of migrants or even inform smugglers of new possible routes and methods. If the identities or other information pertaining to witnesses or informants is inappropriately provided, peoples' lives can be put at risk.

The media have a key role to play in raising awareness to combat the smuggling of migrants and mobilize public support and shape public opinion. For reasons of reach and influence, the media is a powerful tool for social change.

Investigative journalism on the smuggling of migrants needs to be promoted. By writing an article or broadcasting an item on the smuggling of migrants, the media not only raises awareness of dangerous organized criminal activity, but also sheds light on a largely clandestine activity.

In some parts of the world, journalists and media outlets are not adequately aware of issues surrounding the smuggling of migrants or do not have understanding of the scope of the problem. As a result, some media coverage confuses the smuggling of migrants with other issues such as human trafficking.

When printing or broadcasting news about the smuggling of migrants, it is important to provide information that equips the audience with information on how they can act. This may be through providing a hotline to report illegal activity or through providing information about legal channels for migration.

The media should take a rights-based approach and ensure that there is no violation of the rights of smuggled migrants, smugglers of migrants or any other party mentioned in their reports.

Some key dos and don'ts when reporting on the smuggling of migrants are as follows:

- Don't treat smuggled migrants as objects
- Don't take photos of people who have been victims of crime in the course of being smuggled
- Don't ask questions that violate the dignity of smuggled migrants

- Don't distort facts to sensationalize a story
- Don't make migrants relive their experiences—many of them may be suffering from trauma
- Do tell the truth
- Do be accurate, objective and fair
- Do use masking techniques and pseudonyms to protect the identities of migrants and their families
- Do visit areas to understand the root causes of a smuggled migrant's initial desire to migrate
- Do highlight the challenges that smuggled migrants face
- Do cover the story in court: focus on the law, legislative gaps, enforcement, delays etc.

Promising practices

Daniel, Serge. *Les routes clandestines. L'Afrique des immigrés et des passeurs.* Paris: Hachette Littératures, 2008.

The book (in French) is a reportage on the routes and journeys taken by irregular migrants from different countries in West Africa to North Africa and eventually to Europe. The author is a journalist who travelled along these routes over a four-year period, moving with the migrants themselves. The book provides the reader with a picture of migration patterns, describing in detail the migrants' motivations, expectations, precarious livelihoods and relationships with smugglers of migrants. The description of main migration hubs, located in the desert and in North African towns, provides an inside view of the social organization of transit migration. The book presents information on the way that smugglers of migrants are able to move persons across borders and outlines the emergence of a large number of "stranded migrants", that is, people who are rejected by origin, transit and destination countries.

Grandclément, Daniel. *A Journey through Hell.* 2007. Film.

The film traces the stories of migrants undertaking the perilous and desperate journey from Somalia and Ethiopia across the Gulf of Aden as they flee misery and war in search of refuge. Crammed into boats, they embark on journeys that can take several days and can cost them their lives.

Jain, Savyasaachi. *Shores Far Away.* 2007. Film.

Shores Far Away highlights the perils of illegal migration from India to Europe. The 48-minute documentary depicts the aspirations of those hoping to migrate, and the consequences for migrants who have suffered both in body and spirit while pursuing their illegal journeys. It also shows the agony of their families back home in India. The film reveals many of the unknown aspects of the smuggling process, but its prime focus is the human condition of those who undertake this illegal journey.

Recommended resources

Migration Policy Institute

The Migration Policy Institute provides information for journalists at

www.migrationpolicy.org/news/press.php.

Reporters without Borders. *Handbook for Journalists.* Paris, 2010.

Reporters without Borders offers a practical guide to safety for journalists, available at www.rsf.org/The-Practical-Guide-for.html.

Reporters without Borders also offers a hotline for journalists in danger (see www.rsf.org/A-hotline-for-journalists-in.html) and an assistance desk for journalists (see www.rsf.org/Helping-journalists-and-media-in.html).

Society of Professional Journalists

The Society of Professional Journalists provides a code of ethics for journalists.

It addresses the role of journalists in:

- Seeking truth and reporting it
- Minimizing harm
- Acting independently
- Being accountable

www.spj.org/ethicscode.asp

The Society also provides resources on ethical reporting at www.spj.org/ethicsresources.asp and more general resources for journalists at www.spj.org/ij.asp.

United Nations Office on Drugs and Crime

UNODC resources on combating the smuggling of migrants can be found at

www.unodc.org/unodc/en/human-trafficking/publications.html

9.10 Role of the police in raising awareness

Crime prevention publicity campaigns

Developing innovative efforts to reduce crime and social disorder is an integral part of modern police work. Police agencies that undertake such interventions should consider advertising their work and ideas on combating the smuggling of migrants. Departments can help tackle the phenomenon by teaching and raising awareness among potential smuggled migrants, or they can warn offenders of increased police vigilance or improved police practices. When designed properly, publicity campaigns can offer police departments another tool in the fight against the crime of the smuggling of migrants.

Publicity serves to pass relevant information to potential offenders and potential victims. Informing a community about a crime problem, introducing measures to make crimes harder to commit or warning of increased police patrols can lead to an increase in self-protection and/or a decrease in offences.

The term "crime prevention publicity" refers to a planned effort by an agency to promote crime prevention practices by creating distinct campaigns designed to educate victims and potential migrants, or deter offenders.

Publicity campaigns in crime prevention operate much like advertising campaigns in the private sector. Commercial advertisements are intended to persuade a target audience to buy a particular product by publicizing information meant to appeal to that audience. Effective commercial advertisements therefore sway customers to change their behaviour, usually by buying something. When it comes to crime prevention, the same dynamics are at work. Those targeted by the campaign (offenders, victims and potential smuggled migrants alike) need to be exposed to information that will influence their future decision-making processes. The key is to devise proper campaigns and to match the message to the audience. There are numerous ways to use publicity, and agencies can benefit from succinct and properly designed campaigns to support crime prevention efforts.

Police agencies should not blindly resort to publicity campaigns or rely on them to replace proper police interventions. While it may be tempting to adopt publicity campaigns to support police efforts, such attempts should incorporate proper planning and adequate implementation.

A poorly designed publicity campaign may inadvertently increase fear of crime, with undesired consequences such as vigilantism. Police agencies should also refrain from relying on publicity campaigns as a generic response to crime problems. Publicity campaigns should always complement police initiatives, and police departments should be wary of relying on publicity alone to combat crime.

Police should also remember that repeatedly relying on campaigns meant to scare offenders without implementing concrete programmes or enforcement may simply harm police-community relations and not lead to a reduction in crime.

Before mounting a crime prevention publicity campaign, police should carefully analyse the crime problem. Agencies should therefore undertake a publicity campaign only in the context of a broader response to a problem.

The guide's purpose is to help local police plan and implement effective publicity campaigns by exploring their benefits and pitfalls. It explains:

- What is meant by a "police publicity campaign"
- How to target audiences
- The benefits of publicity campaigns
- Issues related to publicity campaigns
- Elements to consider when designing a publicity campaign
- Evaluating a publicity campaign.

Source: Barthe, Emmanuel. Crime Prevention Publicity Campaigns, Problem-Oriented Guides for Police, Response Guide No. 5. Washington, D.C.: Department of Justice, 2006. Available from www.popcenter.org/responses/crime_prevention/1.

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Toolkit to Combat Smuggling of Migrants

Tool 10
Capacity-building and training

10

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Contents

Overview 1
10.1 Training and technical assistance 3
10.2 Training on combating the smuggling of migrants 7
10.3 Training on migration, irregular migration and forced migration 10
10.4 Specialized law enforcement training 12
10.5 Cooperation in relation to training and technical assistance 15

Overview

Tool 10 focuses on training and capacity-building as a means of combating and addressing the smuggling of migrants. It is divided into subsections as follows:

10.1 offers a brief overview of the training and technical assistance requirements set out in article 14, paragraph 1, of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;[1]

10.2 provides some examples and resources for dedicated training on combating the smuggling of migrants;

10.3 highlights the need for understanding of wider migration issues, and offers some resources for training on migration, irregular migration and forced migration;

10.4 includes some examples of specific training for law enforcement officers and officials and also showcases some specialized human rights resources for training police officers;

10.5 highlights the Protocol requirement of increasing capacity through cooperation in technical and training assistance, and recommends some training tools for criminal justice practitioners.

[1]United Nations, *Treaty Series*, vol. 2241, No. 39574.

10.1 Training and technical assistance

Smuggling of Migrants Protocol

Article 14

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.

The key requirement of article 14, paragraph 1, of the Smuggling of Migrants Protocol is for States to provide or strengthen training to prevent the smuggling of migrants and to ensure that persons who have been smuggled are treated humanely.

This implies that training will need to be provided not only on the smuggling of migrants and related conduct, but also on human rights and other relevant issues.

Capacity-building measures should be built on:

- Prior assessment of the situation
- Clear delineation of the role of various agencies
- Understanding of existing knowledge and expertise
- Analysis of the roles and competencies required for the implementation of a comprehensive strategy

Promising practice

United Nations Office on Drugs and Crime. *Impact Programme.*

Justification

United Nations Office on Drugs and Crime (UNODC) missions have revealed that criminal justice systems are often inadequate when it comes to effectively combating the smuggling of migrants and dismantling organized criminal groups. The following factors have been identified in many countries:

- There is inadequate legislation against the smuggling of migrants
- Limited technical resources and equipment and inadequately trained personnel hamper the effective prevention and investigation of the smuggling of migrants and the prosecution and conviction of perpetrators

- There is no coherent and institutionalized national framework to coordinate and prioritize action as well as to analyse information and share intelligence with a view to effectively countering the smuggling of migrants
- There is a lack of effective bilateral and multilateral mechanisms for information-sharing and coordinating operational activities among law enforcement agencies, prosecutors, the judiciary and other relevant actors
- Poor evidence-based knowledge about the perpetrators and criminal groups involved in the smuggling of migrants, including information about their modus operandi and smuggling routes, hampers the formulation of effective policies and operational measures to counter the smuggling of migrants
- The general public, and often the relevant authorities, do not perceive the smuggling of migrants as a criminal activity that poses serious risks to the migrants and the societies concerned

Overall objective

The overall objective is stemming illegal migration by preventing and combating the smuggling of migrants from Africa to Europe, in line with the Smuggling of Migrants Protocol.

Specific objectives

Specific objectives include:

- Strengthening the criminal justice system response to the smuggling of migrants from African States by establishing adequate legislative frameworks
- Building the capacities of law enforcement officials and officers, prosecutors and the judiciary
- Strengthening international and regional cooperation
- Fostering prevention by raising awareness among relevant authorities and the general public.

Target groups

The target groups are:

- Policymakers
- Relevant regional and national authorities
- Law enforcement agencies, including border control and customs
- Prosecutors
- The judiciary
- The media

Expected results

The expected results are as follows:

- Legislative frameworks in line with the Smuggling of Migrants Protocol

- Research report on the smuggling of migrants through and from North Africa to Europe and country assessment reports on existing Governmental capacities to combat the smuggling of migrants
- Effective national cooperation mechanisms and national plans of action
- Improved skills of law enforcement officials, prosecutors and the judiciary, and the establishment of relevant training material and structures
- Establishment of specialized law enforcement units to counter the smuggling of migrants
- Establishment of mechanisms to systematically collect, analyse, develop and use information, as well as to generate and share criminal intelligence with relevant countries
- Improved operational capacity in regional and international cooperation in investigating and prosecuting the smuggling of migrants
- Increased awareness among political decision makers, relevant authorities and the general public of the fact that the smuggling of migrants is a criminal activity that poses serious risks to the migrants and societies concerned

Main activities

The main activities are:

- Implementation of research activities on the smuggling of migrants
- Establishment of assessments of the existing capacities of criminal justice systems with regard to combating the smuggling of migrants
- Assessment and drafting of legislation to counter the smuggling of migrants
- Assistance in national policy development and the establishment of coordination frameworks among the different actors
- Development of training curricula and provision of training to law enforcement officials, prosecutors and the judiciary; specialized training on generating criminal intelligence and proactive investigation techniques
- Establishment of law enforcement units to counter the smuggling of migrants
- Creation of activities to foster international law enforcement and judicial cooperation
- Creation of activities to raise awareness of the criminal aspects of the smuggling of migrants and of its adverse effects

More information about the Impact Programme is available from www.unodc.org/unodc/en/human-trafficking/impact-programme.html.

Recommended resource

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime* and its supplementary Protocols. The *Guides* lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address,

*United Nations, *Treaty Series*, vol. 2225, No. 39574.

while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The *Guides* have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

10.2 Training on combating the smuggling of migrants

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

In the context of the Smuggling of Migrants Protocol, and as part of a larger, comprehensive response to the smuggling of migrants, UNODC launched a drafting process for basic training modules on preventing and combating the smuggling of migrants. The process was undertaken in cooperation with the International Criminal Police Organization (INTERPOL), the European Police Office (Europol), the United Kingdom Serious Organized Crime Agency and, most importantly, experienced practitioners working all over the world to investigate and prosecute those who are involved in the smuggling of migrants. Three working meetings were organized, involving investigators and prosecutors from 30 countries, representing both common and civil law countries. The *Basic Training Manual* is the result of that process.

The modules are the product of a broad participatory process involving experts from the fields of law enforcement and prosecution from several regions of the world. They are designed for use in the delivery of training to law enforcement officials and prosecutors on effective investigation and prosecution of cases of smuggling of migrants. The modules are based on the following thematic areas:

1. Concepts and categories of the smuggling of migrants and related conduct: definitions and the constituent elements of the offence of the smuggling of migrants and related conduct; and the main categories of modus operandi of groups involved in such activities;

2. Role of smuggled migrants and smugglers of migrants in investigations: debriefing smuggled migrants; protecting smuggled migrants as witnesses of crime; understanding the limitations of smuggled migrants' role as witnesses; recognizing the challenges of seeking the cooperation of smugglers of migrants and smuggled migrants; and alternative sources of evidence.

3. Investigative approaches: points of entry for investigation; proactive and reactive investigation techniques; and disruptive techniques;

4. Financial investigations: parallel financial investigations; financial investigations in the pre-arrest phase; seizure of assets and confiscation of proceeds of crime; and the role of financial investigations in investigating the smuggling of migrants;

5. Covert investigative techniques: the use of informants; controlled delivery; and surveillance and undercover operations;

6. Intelligence: the types of strategic and tactical intelligence necessary to combat the smuggling of migrants and how to improve the gathering, analysis, use and sharing of information;

7. Legislative issues: regulatory and legislative background that is relevant when investigating and prosecuting; alternative offences that can be used to prosecute the smugglers of migrants in the absence of specific legislation; and rights of migrants;

8. International cooperation: informal cooperation mechanisms; formal mechanisms (mutual legal assistance); establishing joint investigation teams and inter-agency cooperation;

9. Human rights: those relevant to the investigation and prosecution of the smuggling of migrants, in particular the human rights of smuggled migrants and the rights of suspected smugglers of migrants; principles relating to the protection of refugees; and the role of law enforcement officials and prosecutors in protecting and promoting human rights.

These chapters are complemented by an example of a witness statement, some basic points to consider at the start of an investigation into the smuggling of migrants and a glossary of terms.

The purpose of the *Manual* is threefold. Firstly, it is a reference tool for self-study that provides a basic introduction to investigating and prosecuting the smuggling of migrants. Secondly, it can be used to deliver training to investigators and prosecutors on preventing and combating the smuggling of migrants. Thirdly, since there is no one solution to building capacity to investigate and prosecute the smuggling of migrants, the *Manual* provides a solid knowledge base that can be adapted to a country's specific context. The *Manual* has been designed in such a way that individual modules can be adapted to the needs of different regions and countries, and can serve as the basis for upgrading or supplementing the training programmes of national training institutes. UNODC can assist national institutions in that adaptation process.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

United Nations Office on Drugs and Crime. *e-Learning programme*.

Computer-based training is a form of e-learning that involves interactive CD-ROMs and lessons delivered via interactive television. In this way, students who are located in remote areas can learn practical skills at their own pace.

The UNODC e-learning training packages have been designed to enable law enforcement officials to enhance their skills, knowledge and awareness at their own pace and in their own language using state-of-the-art, interactive computer-based law enforcement training packages. Programmes are tailored for domestic legal circumstances, but also emphasize the regional and global impact of transnational organized crime.

UNODC is currently developing a module on the smuggling of migrants that will provide a basic understanding of the smuggling of migrants in order to improve students' ability to detect and respond to the crime.

More information is available at www.unodc-elearning.org.

Promising practice

United Nations Office on Drugs and Crime. *Training based on the Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*.[2]

UNODC, in cooperation with the French law enforcement body responsible for investigating the smuggling of migrants (Office central pour la répression de l'immigration irrégulière et de l'emploi d'étrangers sans titre) and the French prosecutorial body specialized in fighting organized crime (Juridictions interrégionales spécialisées), delivered a three-day training course on the smuggling of migrants for 22 Moroccan prosecutors. It was the first in a series of training courses for investigators and prosecutors that will be implemented under the Impact Programme, both on a national and regional level, in North and West Africa over a period of 12 months.

For more information on this and other training sessions and events organized by UNODC, visit www.unodc.org.

Recommended resources

United Nations Office on Drugs and Crime. *Anti-human trafficking manual for criminal justice practitioners.* New York, 2009.

The training *Manual* was developed in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. While the purpose of the *Manual* is to support prevention of trafficking in persons, the information contained therein is applicable to the smuggling of migrants.

www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html

[2] United Nations publication, forthcoming.

10.3 Training on migration, irregular migration and forced migration

In order for law enforcements officials and other actors to be able to respond better to the smuggling of migrants and to the smuggled migrants they encounter in their work, it is important for them to have an understanding of broader migration issues. This includes understanding issues with respect to smuggled migrants who may be refugees, and also the human rights of the migrants (and smugglers of migrants) they engage with in their work.

Promising practices

Southern African Migration Programme. *Migration training*.

Between 2002 and 2007, the Southern African Migration Programme teamed up with the University of Witwatersrand to offer regular courses on a range of migration-related issues for middle managers in the public and private sectors.

Shifts in the character of migration to and within the southern African region over the last decade pose significant challenges for effective management and good governance. The course was designed to build the capacity of government and civil society managers involved in migration issues and management.

www.queensu.ca/samp/Training.htm

Organization of American States. *Human rights of migrants course*.

The course, organized jointly by the Organization of American States (OAS) Department of International Law, the International Organization for Migration (IOM) and the International Labour Organization, was held on 6 March 2008. The course was designed to provide members of OAS permanent missions and of its general secretariat with an overview of the basic legal framework and international instruments at the intersection of international human rights law, international migration law and international labour law.

www.oas.org/dil/migrant_workers_course_2008.htm

Recommended resources

United Nations. Human Rights Training: *A Manual on Human Rights Methodology* (Sales No. 00.XIV.1).

The *Manual* provides a methodological approach, developed by the Office of the United Nations High Commissioner for Human Rights on the basis of experience gained from providing human rights training. The basic elements of the approach can be adapted

and modified for different target groups. The *Manual* is intended to offer useful guidance for the planning, implementation and evaluation of human rights training programmes for professionals.

www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx

Migration Citizenship Education

Migration Citizenship Education is an information platform that provides:

- Free online access to learning resources on migration, minorities and human rights
- Information on migration, minorities, asylum, citizenship, identities and human rights
- Country profiles
- Information on good practice projects and cooperation partners
- Support for those involved in education, politics, culture, media and society on issues related to migrants and migration policies in an enlarged Europe.

www.migrationeducation.org

Organization for Security and Cooperation in Europe. *Forced migration training course*.

The course, held in 2009, was aimed at aid, Government and military workers and other professionals involved in providing assistance to migrants and refugees.

The objective of the course was to provide participants with knowledge on the framework and fundamentals of migration, relevant legal tools and practical aspects. It included a combination of theoretical study and practical exercises, such as workshops, case studies and interactive role play. Participants were also encouraged to share their own experiences.

www.osce.org/training

Office of the United Nations High Commissioner for Refugees. *Refworld training resources.*

Training resources, including self-study modules, on issues of refugee protection, human rights and resettlement.

www.unhcr.org/refworld/training.html

Office of the United Nations High Commissioner for Human Rights. *Training and education.*

The Office of the United Nations High Commissioner for Human Rights offers several training manuals on human rights in general, as well as on specific human rights issues. For training manuals specifically aimed at law enforcement officials, see subsection 10.4.

For more information, visit www.ohchr.org/EN/PublicationsResources/Pages/Training Education.aspx.

10.4 Specialized law enforcement training

Several operational law enforcement agencies are transferring their skills and sharing their experiences with partners in their own countries and in others. The delivery of specialized law enforcement training not only strengthens the expertise of law enforcement officers, but also promotes cooperation between them and their international counterparts. Below are some promising practices of specialized law-enforcement training.

Promising practices

Federal Law Enforcement Training Center, United States of America

The Federal Law Enforcement Training Center (FLETC) is part of the Department of Homeland Security of the United States of America. Established in 1970 as a consolidated federal law enforcement training facility to provide basic and advanced law enforcement training to United States federal agencies, its mission was later expanded to include state, local and international training.

The International Training and Technical Assistance Division of FLETC develops, coordinates, manages, and delivers international training and technical assistance. FLETC international programmes help build the law enforcement capacity of other States, fostering improved coordination and cooperation with the Department of Homeland Security and other United States law enforcement agencies in the fight against transnational crime.

www.fletc.gov

International Law Enforcement Academies

The International Law Enforcement Academies (ILEAs) are run by the United States Department of State and the host country. Academies have been established in Botswana, El Salvador, Hungary and Thailand.

ILEA Bangkok

The objectives of ILEA Bangkok are to support criminal justice institution-building in Asia, with an emphasis on rule of law, and strengthening partnerships and cooperation among law enforcement officials in Asia. The training that it offers addresses problems such as narcotics, terrorism and other transnational crimes, and promotes the use of global tools to combat crime, such as mutual legal assistance and extradition. ILEA Bangkok also provides specialized courses and senior criminal justice executive programmes on specific topics of interest and significance to Asia.

ILEA Budapest

The Academy offers training opportunities for up to 130 students at a time. It offers topical seminars and courses and law enforcement training.

ILEA Gaborone

ILEA Gaborone provides training for middle managers from member countries of the Southern African Development Community, East Africa and eligible countries in sub-Saharan Africa.

ILEA San Salvador

ILEA San Salvador aims to support criminal justice institution building and strengthen partnerships among the law enforcement community of the region. The training focus is on transnational crimes, human rights and the rule of law, with emphasis on trafficking in narcotics, trafficking in persons, terrorism, money-laundering and other financial crimes.

www.state.gov/p/inl/crime/ilea

Jakarta Centre for Law Enforcement Cooperation

The Jakarta Centre for Law Enforcement Cooperation (JCLEC) is located within the Indonesian National Police Academy in Semarang, Indonesia.

JCLEC is currently working on the design, development and delivery of six streams of international law enforcement education and training programmes. These will be aimed at law enforcement agency practitioners, including operational managers, middle-level and senior-level managers, and practitioners in specialized technical areas.

The Centre's programmes will aim at achieving high standards of training and technical content. There will be courses, seminars and specialist workshops on practical, operational and investigative management skills, high-end investigations management and cross-jurisdictional liaison skills, initially with a focus on counter-terrorism. This will be based on sound law enforcement education, understanding, shared experiences and cross-jurisdictional cooperation.

www.jclec.com

Recommended resources

United Nations. Human Rights and Law Enforcement: *A Manual on Human Rights Training for the Police* (Sales No. E.96.XIV.5).

The *Manual* contains human rights training for the police. It provides in-depth information on sources, systems and standards for human rights in law enforcement, along with practical guidelines and annexed international instruments.

www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx

United Nations. *Human Rights and Law Enforcement: A Trainer's Guide on Human Rights for the Police* (Sales No. 03.XIV.1).

The *Guide* provides session outlines on a range of human rights topics, along with group exercises, instructions and tips for trainers, and a number of training tools to be used in police training courses.

www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx

United Nations. *International Human Rights Standards for Law Enforcement: A Pocket Book on Human Rights for the Police* (Sales No. 96.XIV.6).

The *Pocket Book* is designed to be a readily accessible and portable reference for law enforcement officers. It contains hundreds of point-form standards, organized according to police duties, functions and topics.

www.ohchr.org/EN/PublicationsResources/Pages/TrainingEducation.aspx

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this training *Manual* address the concept and categories of the smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world.

This publication is currently being prepared. For more information, visit www.unodc.org or contact ahtmsu@unodc.org.

10.5 Cooperation in relation to training and technical assistance

Smuggling of Migrants Protocol

Article 14

2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:

(a) Improving the security and quality of travel documents;

(b) Recognizing and detecting fraudulent travel or identity documents;

(c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants;

(d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and

(e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol.

3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.

In addition to training their own officials, States parties are required to cooperate with one another in training to prevent and combat the smuggling of migrants and in appropriate methods for dealing with smuggled migrants. The obligation to cooperate also includes cooperation with intergovernmental and non-governmental organizations, a number of which are active in matters related to migration. The Protocol also calls for relevant technical assistance to countries of origin or transit, in addition to the more general call for such assistance in articles 29 and 30 of the Organized Crime Convention.

The establishment of programmes of training for domestic officials will not generally require legislative measures, but the materials and personnel used to deliver such training will rely

heavily on domestic legislation, international instruments and, in many cases, the legislation of other States with whom a particular State party is likely to find it necessary to cooperate on a frequent or regular basis. To ensure efficient and effective cooperation with other States parties, cooperation in the development and application of training programmes and the rendering of assistance to other States by providing resources and/or expertise, will also be important.

Promising practices

European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. *Common core curriculum for border guard training across Europe*.

The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) assists member States to train national border guards and establish common training standards, thereby contributing to the improved professionalism of member States' border guards. The common core curriculum developed by Frontex will form the basis of this system. This new European curriculum will be the first common curriculum that includes common skills and competencies for the basic training of border guards across Europe.

www.frontex.europa.eu

International Organization for Migration. *Specialist training in China.*

In July 2009, the IOM Liaison Office in China held a one-week training course in fraudulent travel document examination for 30 senior Chinese immigration and consular officials under its Capacity Building for Migration Management in China project.

The workshop was the first of its kind in China and demonstrated the growing interest in the country in building the capacity of its migration management staff to comprehensively manage inward and outward regular and irregular migration flows.

The training was provided by IOM experts and specialists from the Portuguese Border and Aliens Service and the German Federal Police. It introduced senior document examiners from immigration inspection posts in Beijing, Shanghai, Guangzhou and Xiamen to international best practices in the inspection and identification of fraudulent travel documents.

During the training, IOM also launched the Chinese translation of its Passport Examination Procedure Manual. The manual is designed for use by frontline immigration and consular officials and promotes a standardized approach to the inspection and identification of fraudulent travel documents.

Information on other training and events organized by IOM, as well as the Passport Examination Procedure Manual, are available from www.iom.int.

United States Committee for Refugees and Immigrants. *U.K. and Bosnia Join Forces to Halt Human Smuggling.* Refugee Reports, vol. 22, No. 8 (September 2001).

A report on the training of border police of Bosnia and Herzegovina in forgery detection and investigative techniques by a team of immigration experts sent by the Government of the United Kingdom to Sarajevo in September 2001.

United Nations Office on Drugs and Crime. *Workshop on International Criminal Justice Cooperation in Response to the Smuggling of Migrants.*

On 6 and 7 July 2009, law enforcement officials and prosecutors from several countries in North Africa and Europe met to discuss criminal justice cooperation in response to the challenges of combating the smuggling of migrants. The participants, from Egypt, France, Italy, the Libyan Arab Jamahiriya, Morocco, the Netherlands, Spain, Tunisia, Turkey and the United Kingdom, as well as Europol, INTERPOL and UNODC, stressed the need for increased capacity-building of criminal justice actors through cooperative training.

www.unodc.org/unodc/en/human-trafficking/workshop-on-international-criminal-justice-cooperation-in-response-to-migrant-smuggling.html

Recommended resources

United Nations. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (Sales No. E.05.V.2).

The main purpose of the *Legislative Guides* is to assist States seeking to ratify or implement the United Nations Convention against Transnational Organized Crime and its supplementary Protocols. The *Guides* lay out the basic requirements of the Convention and the Protocols thereto, as well as the issues that each State party must address, while furnishing a range of options and examples that national drafters may wish to consider as they try to implement the Convention and its Protocols. The *Guides* have been drafted to accommodate different legal traditions and varying levels of institutional development and provide, where available, implementation options.

www.unodc.org/unodc/en/treaties/CTOC/legislative-guide.html

United Nations Office on Drugs and Crime. *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants.*

The modules contained in this *Training Manual* address the concept and categories of the smuggling of migrants, the role of smuggled migrants and smugglers of migrants in the criminal justice process, investigative approaches, financial investigations, covert investigative techniques, intelligence, legislative issues, international cooperation and human rights. The modules are the product of a broad participatory process involving experts from the field of law enforcement and prosecution from several regions around the world.

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Annexes

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Toolkit to Combat Smuggling of Migrants

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Contents

Annexes

I. Tools relating to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime 1

II. Glossary 15

III. Feedback form 18

Annex I Tools relating to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime[1]

Preamble

	Relevant tool
The States Parties to this Protocol,	
Declaring that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels,	6
Recalling General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development,	1 9 1.2, 1.3, 1.4, 1.5, 1.6, 1.7 1.1
Convinced of the need to provide migrants with humane treatment and full protection of their rights,	9
Taking into account the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues,	3
Concerned at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned,	
Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved,	1.13, 1.14, 8.3
Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea,	3.1, 3.2

[1] United Nations, *Treaty Series*, vol. 2241, No. 39574.

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime, 3

Have agreed as follows:

I. General provisions

Article 1. Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention. 3
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.
3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention. 5.2

Article 2. Statement of purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants. 3

Article 3. Use of terms

For the purposes of this Protocol:

(a) "Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident; 1.8, 5.1

(b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State; 5.1, 5.2

(c) "Fraudulent travel or identity document" shall mean any travel or identity document: 6.13, 9.5

(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or

(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or

(iii) That is being used by a person other than the rightful holder;

(d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service. 7.21, 8.4

Article 4. Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences. 9 5 7 5.6, 5.7

Article 5. Criminal liability of migrants

Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol. 1.9, 5.3

Article 6. Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit: 5, 4

(a) The smuggling of migrants; 5.2

(b When committed for the purpose of enabling the smuggling of migrants: 5.4

(i) Producing a fraudulent travel or identity document;

(ii) Procuring, providing or possessing such a document;

(c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph *(b)* of this paragraph or any other illegal means.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences: 5.4

(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;

(b) Participating as an accomplice in an offence established in accordance with paragraph 1 *(a)*, *(b)* (i) or *(c)* of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 *(b)* (ii) of this article;

(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 *(a)*, *(b)* (i) and *(c)* of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 *(b)* and *(c)* of this article, circumstances: 5.8

(a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or

(b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.

4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law. 5.3

II. Smuggling of migrants by sea

Article 7. Cooperation

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea. 2.8, 6.11

Article 8. Measures against the smuggling of migrants by sea 6.11, 7.21

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, inter alia:

(a) To board the vessel;

(b) To search the vessel; and

(c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.

3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.

4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.

5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.

6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

Article 9. Safeguard clauses

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall: 8.4

(a) Ensure the safety and humane treatment of the persons on board;

(b) Take due account of the need not to endanger the security of the vessel or its cargo;

(c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;

(d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.

3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:

(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or

(b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.

4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

III. Prevention, cooperation and other measures

Article 10. Information

1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as: 6.16, 7.15

(a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol; 2.1, 2.7, 2.8, 2.9

(b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol; 2.1, 2.3

(c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents; 2.4

(d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them; 2.1, 2.4, 2.7, 2.8, 2.9

(e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and 4.5, 5.12

(f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved. 4.7, 7.16, 7.17, 7.18, 7.19

2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

Article 11. Border measures

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect the smuggling of migrants. 6.12, 7.12

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of the offence established in accordance with article 6, paragraph 1 *(a)*, of this Protocol. 7.14

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State. 7.14

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article. 7.14

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication. 6.12

Article 12. Security and control of documents

Each State Party shall take such measures as may be necessary, within available means: 6.13, 7.13, 9.5

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13. Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for purposes of conduct set forth in article 6 of this Protocol. 6.13, 7.13, 9.5

Article 14. Training and technical cooperation 6, 10

1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol. 6.4, 10.1, 10.2, 10.3, 10.4, 10.5

2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include: 6.14, 6.17, 10.5

(a) Improving the security and quality of travel documents; 6.13

(b) Recognizing and detecting fraudulent travel or identity documents; 6.13

(c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants; 6.16 7.15

(d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and 7.11

(e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol. 8

3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6. 10

Article 15. Other prevention measures

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned. 2.2, 9.1, 9.6, 9.7, 9.8, 9.9, 9.10

2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups. 9.6, 9.7, 9.8, 9.9, 9.10

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment. 9.1, 9.2, 9.3, 1.1, 1.2, 9.4

Article 16. Protection and assistance measures 8

1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. 8.1, 8.2, 8.5, 8.6, 8.7, 8.8, 8.9

2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol. 1.13, 1.14, 8.3

3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol. 8

4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children. 1.3, 8, 7.20

5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations,[2] where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers. 7.22

Article 17. Agreements and arrangements

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at: 3.5, 6

(a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or

(b) Enhancing the provisions of this Protocol among themselves.

Article 18. Return of smuggled migrants 6.15, 7.23, 8.9, 8.10, 8.11

1. Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.

[2] United Nations, *Treaty Series*, vol. 596, No. 8638.

2. Each State Party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.

3. At the request of the receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.

4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State Party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each State Party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.

6. States Parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State Party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

IV. Final provisions

Article 19. Saving clause

1.10, 3.4, 5.11, 8.9, 8.10, 8.11

1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[3] and the 1967 Protocol[4] relating to the Status of Refugees and the principle of non-refoulement as contained therein.

[3] United Nations, *Treaty Series*, vol. 189, No. 2545.
[4] United Nations, *Treaty Series*, vol. 606, No. 8791.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 20. Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 21. Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 22. Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 23. Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 24. Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.

Article 25. Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Annex II. Glossary of terms[5]

Term	*Definition*
aggravating factor/circumstance	A factor or circumstance that makes a situation or action worse than it would otherwise be
asylum-seeker	A person seeking to be admitted into a country as a refugee
blue border	A sea border between States
confidential	Done or communicated in confidence or in secret and intended to remain so
counterfeited document	A document that has not been legitimately manufactured or issued
forensic	Science or technology used in the investigation and establishment of facts or evidence in a court of law.
fraudulent document	A document that has been altered but was originally legitimately manufactured and issued
fraudulently obtained document	A legitimately manufactured document that is unaltered but not legitimately issued to the person in possession of it
genuine document	A document that is unaltered, legitimately manufactured and legitimately issued
green border	A land border between States
information	Data received by law enforcement
intelligence	Information that has been through a certain process to give it more meaning (for example, corroboration, analysis, evaluation or dissemination) and is passed on or used by another person, agency or unit
investigation	Process carried out by law enforcement personnel that involves inquiring into a matter through research, follow-up, study or a formal procedure

[5]For a more detailed glossary on the subject of migration see the International Organization for Migration's Glossary on Migration (available from www.iom.int).

irregular migrant	Someone who, owing to illegal entry or the expiry of his or her visa, does not have legal status in a country—term applied to migrants who infringe a country's admission rules and any other person not authorized to remain in the country (also called a clandestine or illegal or undocumented migrant or a migrant in an irregular situation)
irregular migration	Movement that takes place outside the regulatory norms of the sending, transit and receiving countries; the illegal entry, stay or work in a country; term used to refer to cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfil the administrative requirements for leaving a country; the term "illegal migration" usually used only in relation to the smuggling of migrants and trafficking in persons
migrant	A person who decides, of his or her own accord, to move to another country or region to better his or her material or social conditions
minor	According to international law, any person under 18 years of age
non-refoulement	The principle that a State cannot expel or return a person to the frontiers of territories where his or her life or freedom is threatened because of his or her race, religion, nationality, membership of a particular social group or political opinion
pull factor	One of the factors that draw would-be migrants towards particular countries (for example, language, family ties, employment, benefits, schooling, health care etc.)
push factor	One of the factors that push would-be migrants away from their countries of residence (for example, war, poverty, conflict, natural disaster, lack of employment, crime etc.)
reactive investigation	An investigation that began as a law enforcement response to a particular incident
refugee	A person who, owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group or political opinion or who, for political reasons, including conflict or war, is unable or unwilling to return to his or her country of origin (or, if stateless, to his or her country of habitual residence)
sham marriage	A marital union entered into for the purpose of circumventing immigration laws

smuggled migrant	A person whose illegal entry or stay in a country of which he or she is not a national or permanent resident has been facilitated by another person, for the purpose of financial or other material benefit
trafficking in persons	"The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation." Article 3 *(a)* of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Transnational Organized Crime Convention[6]
victim of crime	Person who has been harmed by the perpetrator of an act that is defined as a crime under international and/or domestic law

[6] United Nations, *Treaty Series*, vol. 2237, No. 39574.

Annex III Feedback form

The Toolkit to Combat the Smuggling of Migrants is intended as a practical resource for all those involved in efforts to combat the smuggling of migrants. It is hoped that the Toolkit will continue to evolve. Feedback received on the Toolkit will be used to improve it.

In the same spirit of cooperation that has guided the process of designing and compiling the Toolkit, its users are asked to take a few minutes to provide feedback, advice and recommendations that can make it more useful in future.

Users of the Toolkit are kindly requested to complete and return the feedback form, or simply e-mail their opinions, suggestions or input for future editions:

Anti-Human Trafficking and Migrant Smuggling Unit
United Nations Office on Drugs and Crime
Tel.: (+43-1) 26060-5687
Fax: (+43-1) 26060-5983
E-mail: ahtmsu@unodc.org

Thank you for your contribution to the development of the Toolkit.

PLEASE RETURN TO:
FAX: (+43-1) 26060-5983
E-MAIL: ahtmsu@unodc.org

FEEDBACK FORM

Usefulness of the Toolkit

How would you rate the usefulness of the Toolkit in the following areas?	*Very useful*	*Useful*	*Moderately useful*	*Not very useful*	*Not at all useful*	*No opinion*
Tool 1. Understanding the smuggling of migrants	○	○	○	○	○	○
Tool 2. Actors and processes in the smuggling of migrants	○	○	○	○	○	○
Tool 3. International legal framework	○	○	○	○	○	○
Tool 4. Problem assessment and strategy development	○	○	○	○	○	○
Tool 5. Legislative framework	○	○	○	○	○	○
Tool 6. International criminal justice cooperation	○	○	○	○	○	○
Tool 7. Law enforcement and prosecution	○	○	○	○	○	○
Tool 8. Protection and assistance measures	○	○	○	○	○	○
Tool 9. Prevention of the smuggling of migrants	○	○	○	○	○	○
Tool 10. Capacity-building and training	○	○	○	○	○	○

Usefulness of the Toolkit

How would you rate the Toolkit in the following areas?	*Excellent*	*Good*	*Average*	*Poor*	*Very poor*	*No opinion*
Quality of Promising practices	○	○	○	○	○	○
Quantity of Promising practices	○	○	○	○	○	○
Quality of Recommended resources	○	○	○	○	○	○
Quantity of Recommended resources	○	○	○	○	○	○
Clarity of language	○	○	○	○	○	○
Overall usefulness of the Toolkit	○	○	○	○	○	○

Your work

In which sector do you work? *Please give further details*

- ○ Policymaking
- ○ Law enforcement
- ○ Judiciary
- ○ Service provision
- ○ Non-governmental organization
- ○ International organization
- ○ Other

Use of the Toolkit

How do you use or intend to use the Toolkit in your work? *Please give further details*

- ○ Policymaking
- ○ Training
- ○ Awareness training
- ○ Desk reference
- ○ Other

Recommended resources

Can you recommend any resources for inclusion in the next edition of the Toolkit?

Promising practices

Can you recommend any promising practices for inclusion in the next edition of the Toolkit?

Any other comments:

UNODC

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