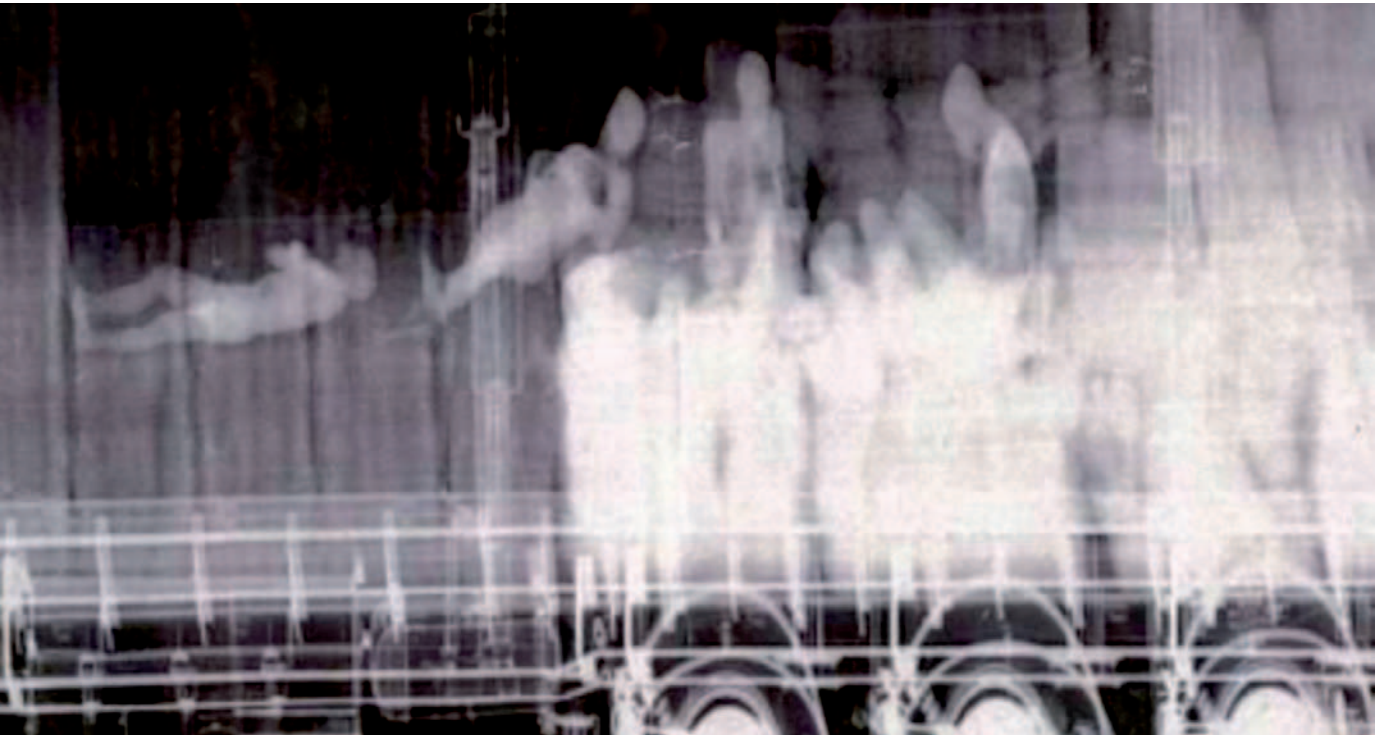




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United Nations Office on Drugs and Crime



Toolkit to Combat Smuggling of Migrants

Tool 7

Law enforcement and prosecution



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

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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 arrive³

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:

<i>Type of record</i>	<i>Possible benefits</i>
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 measure⁵

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, 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.
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

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 witness 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 sea⁶

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 Strait

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,EU_COMMISSION,,,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

^aUnited 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^b

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;

^bIbid., 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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