




DIFFERENTIATING TRAFFICKING IN PERSONS AND SMUGGLING OF MIGRANTS

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 **TRAFFICKING IN PERSONS**


Definitions


Article 3 *Trafficking in Persons Protocol*

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

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TRAFFICKING IN PERSONS

Elements		
Act	+	Purpose
Recruitment, transportation, transfer, harbouring or receipt of a person		Exploitation. Including: prostitution, sexual exploitation, forced labour, ...
	+	Means
		Threat or use of force, coercion, abduction, fraud, deception, abuse of power, giving or receiving payments ...

Consent: The consent of a victim of trafficking in persons to the intended exploitation [...] shall be irrelevant where any of the means [...] have been used.

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Types of Trafficking/Exploitation

Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

- ◉ Sexual exploitation
- ◉ Slavery and servitude
- ◉ Organ trafficking

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TRAFFICKING IN PERSONS

Types of Trafficking/Exploitation (cont.)

- **Forced labour**
 - Forced labour is not defined in the *Trafficking in Persons Protocol*, leaving it up to legislators to employ definitions set out in other international conventions.
 - *Convention concerning Forced or Compulsory Labour* (ILO, 1930.): “Forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Art. 2)

Forced labour may include, for instance:

- Agricultural labour
- Factory work; sweatshops
- Fishing industry, diving for pearls and oysters
- Entertainment industry
- Service industry
- Construction work, etc.

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TRAFFICKING IN CHILDREN


Elements		
Act Recruitment, transportation, transfer, harbouring or receipt of a person	Purpose Exploitation. Including: prostitution, sexual exploitation, forced labour, ...	Means Threat or use of force, coercion, abduction, fraud, deception, abuse of power, giving or receiving payments ...

+

Children under 18: The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means [...]

Not required

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 **SMUGGLING OF MIGRANTS**

Definition: Art 3(a) *Protocol against the Smuggling of Migrants*

“smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into the State Party of which the person is not a national or a permanent resident.

Physical Element


- Procurement
- Of the illegal entry of a person ...

Mental Elements

- Financial or material benefit

‘The reference in this definition to “a financial or material benefit” was included in order to emphasise that the intention was to [...] exclude the activities of those who provide support to migrants for humanitarian reasons or on the basis of close family ties.’ UNODC, 2010

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 **DISTINCTIONS**

	Smuggling of Migrants	Trafficking in Persons
Purpose of offence	To protect sovereignty of the state (human rights violation might occur, but are not an element of the crime)	To protect a person against human rights violations
Nature of crime & relationship	Commercial; relationship between smuggler and migrant ends after illegal border crossing achieved and fee paid	Exploitative; relationship between trafficker and victim continues in order to maximize economic or other gains from exploitations
Rationale	Organized movement of persons for profit	Organized recruitment/movement and exploitation of the victim for profit
Border crossing	Illegal border crossing is a defining element	Border crossing is not a mandatory requirement; domestic trafficking is possible.
Consent	Smuggled migrants consent to illegal border crossing	Either no consent or initial consent made irrelevant because of use of force, coercion etc. at any stage of the process

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PRACTICAL CONSEQUENCES

Law Enforcement & Prosecution

- ★ Different offences with different elements apply to trafficking in persons and migrant smuggling.
- ★ Different offences/elements require different evidence/proof.
- ★ The persons smuggled/trafficked may react differently and have different attitudes to government officials.
- ★ Law enforcement need to be mindful of the special vulnerabilities of victims of trafficking in persons.
- ★ Law enforcement need to be aware of the assistance and support victims of trafficking/smuggled migrants may require and may be entitled to.
- ★ Depending on the jurisdiction, different powers and procedures may apply depending on the offence.
- ★ ...

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PRACTICAL CONSEQUENCES

Perpetrators

- ★ Traffickers and smugglers will be liable under different offences.
- ★ They may be able to raise different defenses. For example, a smuggler may be able to argue that he/she acted for humanitarian reasons, or acted under duress/out of necessity.
- ★ Different penalties usually apply.
- ★ Different agencies may be responsible; different procedures may apply.
- ★ ...

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PRACTICAL CONSEQUENCES

Victims of Trafficking in Persons – Smuggled Migrants

- ★ Victims of trafficking in persons will often be traumatized by the exploitation they endured.
- ★ Victims of trafficking will frequently be unwilling to identify themselves or cooperate with law enforcement.
- ★ Assistance, protection, and support available to victims of trafficking and smuggled usually differs.
- ★ Smuggled migrants and victims of trafficking in persons may have access (or no access) to different visas.
- ★ Different government agencies, NGOs, and international organizations may be responsible for dealing with victims of trafficking and smuggled migrants.
- ★ ...

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VICTIM IDENTIFICATION

General Considerations

Not a Victim?	Possible Victim?
<p>❓ Is the person a witness or a source of other information?</p>	<p>✓ May require immediate rescue, protection</p>
<p>❓ Is the person perhaps an offender or associate?</p>	<p>✓ May require assistance, medical care, accommodation</p>
<p>❓ Why was the person at the scene?</p>	<p>✓ May have certain entitlements, rights</p>

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