



UNODC

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Issue Paper

**Migrant smuggling
by air**

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Introduction

Currently, information available about migrant smuggling by air is incomplete and scattered. Smuggling routes are often circuitous. Smuggled migrants travel through several different airports in different continents, using fraudulent documents or documents obtained on fraudulent grounds. The transnational and sophisticated nature of this crime highlights the need for a comprehensive and international response to counter it. However, to date, very little is known about the modus operandi of criminal groups who smuggle migrants via air. The lack of comprehensive knowledge about the phenomenon hampers a concerted and cooperative response to it.

To address this lacuna, UNODC convened an Expert Group Meeting in Vienna on 7 to 9 December 2009 aimed at increasing understanding of migrant smuggling by air, with the objective of better preventing and combating the phenomena. The Expert Group Meeting specifically aimed to gain a better understanding of:

- the modus operandi of migrant smugglers who use air routes to commit their crimes;
- good practices of law enforcement and other actors involved in responding to this problem;
- what the gaps in knowledge of and response to this particular method of migrant smuggling are; and
- how UNODC and other international actors can better assist states in strengthening capacities to prevent and combat the smuggling of migrants by air.

This Issue Paper is the result of discussions which took place in the context of this Expert Group Meeting. In this respect it is important to note that the information contained in this Issue Paper is not the result of scientific studies or research, but is based solely on informal discussions, information exchanged and experiences shared in the context of this Expert Group Meeting.

1. Overview of migrant smuggling by air

Definition of migrant smuggling and related conduct

Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (the Migrant Smuggling Protocol) defines migrant smuggling as:

“..the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national”.

Article 6 of the Migrant Smuggling Protocol requires the criminalization of this conduct.

In addition, Art. 6 requires states to criminalize the following conduct:

“enabling a person to remain in a country where the person is not a legal resident or citizen without complying with requirements for legally remaining by illegal means” in order to obtain a financial or other material benefit.

In short, the combination of the following elements constitutes ‘migrant smuggling and related conduct’:

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

Furthermore, Article 6 of the Migrant Smuggling Protocol requires states to criminalize producing, procuring, providing or possessing fraudulent travel or identity documents when done for the purpose of enabling smuggling of migrants.

Modus operandi of migrant smuggling by air

Migrant smuggling by air is often used in combination with other forms of travel. For instance, a smuggled migrant may travel in airplanes for part of their journey but transit through or between countries on land or by sea. The combination will depend on which routes offer the least resistance. Use of air routes by migrant smugglers also offers a degree of flexibility. Often routes will be tested and adapted, with larger groups of migrants sent along successful ones. This makes migrant smuggling by air difficult to analyse given that in some regions, journeys will often begin with air travel but the remainder of the process will employ land and / or sea routes.

Central to the commission of migrant smuggling by air, is the role of document abuse, including use of ‘look-a-likes’, and corruption. Document abuse can involve alteration of genuine documents (including passports, visas or other documents to support visa applications) or counterfeit documents. Corruption can involve low level actors such as cleaning staff at airports or high level actors including immigration or consular representatives. Both of these issues are discussed at length below.

Another modus operandi of migrant smuggling has been the misuse of asylum procedures, whereby migrants are coached to claim asylum. While the misuse of asylum claim procedures has been successfully used to irregularly migrate, two key points must be stressed in this respect. Firstly, legitimate refugees may use the services of criminal smugglers. Article 19 of the Migrant Smuggling Protocol stresses that the fact of having been smuggled, cannot jeopardize a person's asylum claim. Secondly, the fact that a smuggled migrant makes a legitimate asylum claim and is correctly accorded the status of refugee, does not make the actions of the migrant smuggler any less criminal where he or she smuggled the migrant for financial or material gain.

The misuse of transit facilities of airports in common transit hubs is an increasingly used modus operandi by migrant smugglers throughout the world. In this method of smuggling, criminal organizations will send migrants on an airplane with legitimate documents (passport, visa as required) to a transit hub. At the point of transit, on the instructions of the smugglers, the migrant will destroy his or her documents and deliberately miss the onward flight to the stated destination. The migrant is often given contact details for a member of the criminal organization in this transit port, who will meet them in the international lounge. During this meeting, falsified documents and new travel tickets will be provided to the migrant for their onward travel to their intended destination. In this modus operandi, the travel to the point of transit is regular, or legal, and becomes irregular thereafter.

Some of the less prevalent and rarely reported means of using air travel for irregular migration has been use of emergency exits in airports into domestic areas, often with the assistance of airport staff. There have been isolated incidents of persons hiding in planes during transit and then finding an available seat for the second leg of the journey. In smaller airports, groups of people have rushed security gates in an attempt to overwhelm staff.

Migrant smuggling by air is relatively risk-free for high-level smugglers, given that they rarely travel with the people they smuggle – perhaps only having contact with them in transit zones of large international airports. Where migrants are escorted, it is generally with low-level smugglers. This means that the high-level actors of groups or networks that smuggle migrants by air are very rarely brought to justice. Often routes are operated by networks of smaller organized groups. Clients will be passed from a local organized crime group to the next, reducing the vulnerability of smugglers to detection along the routes, given that law enforcers rarely have an overview of the entire route used. This lack of overview makes several smuggling attempts possible. For instance, where a fraudulent passport is identified at a particular airport by airport staff, the person bearing the document may be prevented from boarding a plane but the passport returned to them, enabling them to attempt to use it at another airport.

In short, migrant smuggling organizations are generally flexible and well-informed, and able to adapt routes and methods to law enforcement counter-measures. They sometimes have strong intelligence networks and are well-resourced to adapt and implement new strategies.

Patterns, trends and extent of migrant smuggling by air

The extent to which migrant smuggling by air occurs throughout the world is difficult to ascertain. One reason for this is that apprehensions of irregular migrants at airports can only be an indicator of the total number of irregular migrants travelling by air (including those who are not apprehended). Among those who are apprehended, the extent to which smugglers have been involved can often only be assumed. In this context, smugglers are believed to be involved in smuggling via air to a significant extent, in the recruitment of migrants, facilitation, production of

necessary travel documents, coaching / training of migrants and in their insertion into destination countries by providing housing and / or work.

Apart from irregular migration that takes place between neighbouring countries, it is generally assumed that a significant portion of irregular migration includes smuggling-facilitated air travel at some point in the journey. Despite this, there is a relatively low-level of detection. One concrete example is the successful operations involving small groups of migrants travelling on the same route every day with an escort who carries a suitcase concealing the forged documents meant for the following group of migrants. There are several other such examples.

The air routes that are used by migrant smugglers are constantly shifting to evade preventative measures put in place by authorities. Large international transit areas where there are a large number of people to process on a daily basis are particularly at risk of being exploited by smugglers. Contrarily, smaller airports where there are fewer officials, and/or where officials are not adequately trained in document control are also targeted. Low-cost airlines are also vulnerable to abuse for reason of their lack of resources to thoroughly check documents. Web check-in systems are also exploited by smugglers; e-ticketing and frequent flyer programs involving fewer document checks are often favoured by smugglers.

A trend that has been observed in the last few years is that of drug smugglers switching to migrant smuggling. Migrant smuggling – for which there is high demand - is considered to be equally profitable but significantly less risky than drug smuggling; migrants can transport themselves making it is easier to deny having smuggled a person than it is to deny having smuggled drugs which must be physically carried.

Actors involved in migrant smuggling by air

Profile of Migrant Smugglers

There are very few criminal networks which control an entire smuggling process. Rather, smugglers tend to outsource various parts of the process or legs of the journey, passing clients from one local organised crime group to the next. Some organised crime groups are careful to recruit individuals with no criminal background so as to avoid drawing attention to their operations.

Individual smuggling actors involved in the process of air smuggling include intermediaries, coordinators, forgers, money brokers, escorts (employees or organizers) who travel with clients, sponsors in destination communities, corrupt officials and persons who may unknowingly facilitate the smuggling process. Some groups also employ analysts to research routes, observe smuggling teams in transit and profile law enforcement authorities to inform the group on how to evade detection. Another role is played by individuals sometimes known as 'friends of the police'. The role of these individuals is to build close links with the police, often by denouncing irregular migrants to 'test' the police response and adapt routes and modus operandi accordingly.

Some individuals are specialists in visa systems and regulations and extremely well informed on airport and law enforcement procedures, making them highly adaptable. Smugglers stay abreast of changes in policy and know where detention facilities are when and when they are full and therefore unable to accommodate more intercepted persons. Smugglers will change routes as soon as law enforcement or airport authorities become suspicious. The various roles played by these individuals indicate a high level of sophistication of the modus operandi used by organised crime groups.

The role of travel agents in migrant smuggling by air is significant. The involvement of a legitimate travel agency business has frequently been reported; travel agents will often mix regular travellers with smuggled migrants to disguise the crime. There have been rare examples of travel agents even organizing chartered flights specifically for the purpose of smuggling migrants. There have also been isolated reports of well-resourced organized crime groups owning their own travel companies.

Individual smugglers will either work full time in the smuggling business or occasionally as opportunities arise. Smuggling businesses may be family-run, with one member of the family taking responsibility for a particular aspect of the process (for instance, document forgery) and other members overseeing other aspects (such as escorting clients or handling financial transactions).

Initial contact with clients in the country of origin is generally made by smugglers of the same ethnicity. Similarly, contacts in destination countries often share the same ethnicity as the 'client'. In transit countries, where a particular ethnicity would draw attention to the smuggling operation, locals from transit countries or corrupt officials will be used.

It must be noted that some migrant smugglers also operate as human traffickers. What begins as smuggling may become trafficking; often victims of trafficking are escorted along the journey.

Profile of Smuggled Migrants

Though generalizations as to the migrants who use the services of smugglers for air travel are difficult to make, it has been generalized that clients are generally males between the ages of 25

and 34 who travel alone. However, where migrants are travelling from politically unstable countries of origin, migrants tend to be more diverse. There have also been several reports of cases in which situations of smuggling becoming situations of trafficking involving females.

Nationalities of migrants are diverse and often difficult to ascertain given that one modus operandi is for migrants to claim nationalities that are not their own in a bid to take advantage of policies of non-return to countries where lives and safety would be put at risk.

A migrant's choice of destination is based on several factors. Key among them is the language of the destination country, often related to historical / colonial ties. Destination countries are also selected based on their asylum procedures, employment opportunities, access to social rights, family ties or presence of migrant communities. In some instances, the distance of the destination country from the country of origin may be a consideration.

Payments and profits in migrant smuggling by air

Because migrant smuggling by air is relatively safe and successful compared to other means of travel, smugglers can charge migrants more for their services. Air travel is also significantly faster than other forms of transport, making it a sought-after means of smuggling. Another attraction of some air smuggling services is that smugglers sometimes offer their 'clients' free re-trials in the event that the initial attempt fails.

In some situations, the smuggling fee is only paid where the smuggling has been successful, but generally payment of the smuggling fee is given for various legs of the journey. Where one leg of the journey has been completed, the family of the migrant may be contacted to pay the next installment to the recruiter and the journey continues. Some groups use *hawala*, or informal financial systems. Other groups have more sophisticated full package arrangements in place.

Though it is difficult to ascertain what the profit margin for migrant smugglers by air is given that it largely depends on the modus operandi used, it is generally considered to be a profitable mode of migrant smuggling from which smugglers derive a high profit margin. In cultures where a higher cost of a service indicates a higher quality of that service, smugglers are able to significantly raise fees. Generally it can be assumed that an organized crime group would only engage in this activity where the profit margin is well above 50%.

Smuggling fees raise issues of other crimes including drug smuggling and human trafficking. There have been instances of migrants carrying drugs with them to fully or partly pay for the smuggling fee. Otherwise, the smuggling fee has been paid through sexual services, often rendering the smuggled migrant a victim of human trafficking.

The role of document abuse

The use of documents can either be in the form of forged documents (where documents have been fraudulently altered), fraudulently obtained documents (for instance passports issued on the basis of false birth certificates), or in the misuse of valid documents (for instance, where documents are used by a person who is not the owner of the documents; look-a-likes). The quality of forgeries is increasing as is the use of genuine documents. Forged and fraudulently obtained documents can be re-used several times after being returned to the country of origin. The same visa for instance, can be used repeatedly within its date of validity. There have also been situations where the same passport will be used several times to smuggle several people. In addition to

sophisticated methods of document abuse to facilitate migrant smuggling by air, there have been many incidents of document swapping, whereby flight tickets, passports and boarding passes will simply be swapped in airport transit zones.

Passports

Migrant smugglers have employed several different forms of document abuse pertaining to passports to facilitate air smuggling operations. These have included passports which have been forged, falsified, fraudulently obtained, stolen for use by 'look-a-likes', counterfeited or even 'fantasy' (where a passport is created for a country that does not exist).

The use of genuine passports has been aided by passport theft or even passport bearers themselves (for instance, backpackers or members of the migrant's family and/or community) selling their own passport and then reporting it lost or stolen. Genuine passports can be used in a variety of ways. Substituting a passport photo for that of the migrant is increasingly rare given that there is a high rate of detection. Rather, smugglers generally replace the bio-data page, sometimes with the involvement of corrupt officials using official techniques. Passports with counterfeit bio-data pages are a very expensive form of falsified document used by migrant smugglers, often costing several thousands of dollars. Passports from countries with visa-free entry are the most sought after and therefore the most expensive, particularly where they come from a country with a large community of people with same ethnicity as people wanting to be smuggled.

The introduction of electronic passports in some countries has resulted in an increase of impersonation through their use by 'look-a-likes.' The use of look-a-likes is a common means of smuggling migrants. In this method, the smuggled migrant will travel with a passport or other document belonging to a person who looks very similar to them. In some very sophisticated, albeit rare attempts to make a would-be migrant look like the person whose documents they are travelling on, migrants have undergone plastic surgery or altered their fingerprints where fingerprint technology is used. The 'look-a-like' technique may be used to obtain a genuine passport; for instance, whereby an imposter will apply for a renewal or replacement of a document with their photograph.

Passport or other document factories are prevalent in some parts of the world and are professionally and productively run. Often forgers will work as contractors, not necessarily working as a fixed part of a smuggling group but independently for anyone paying for forged documents. In some cases, the forged documents are not purchased by smugglers outright but rather a deposit is paid for their use and the documents are returned to be used again. The quality of a particular forgery depends on its intended use by the migrant paying for smuggling services; for instance, where the intent is to claim asylum the quality of the document does not need to be as high given that the passport may be destroyed once a plane has been successfully boarded. However, if the document is intended to be used to remain in the destination country, it will need to be of high enough quality to evade detection by immigration officers. Poor quality of a given document or documents as a barrier to smuggling can be overcome where corruption is employed.

Visa smuggling

A common modus operandi for migrant smugglers is 'visa smuggling' understood to be the obtaining of regular visas (of various categories including travel, student and business visas) through fraudulent means. Visa smuggling is often planned well-ahead of the actual travel and combines a variety of methods for different stages of the journey. Such methods can include for instance, the creation of fictitious companies to obtain executive visas to a particular destination

country, for the purpose of working in a phantom branch of that company with the help of a lawyer or other actor in the destination country. Visa applications can also be supported by other counterfeited documents including flight tickets, boarding passes, resident permits and other documents to show that the identity of the visa applicant is the same as that in their passport.

Another type of 'visa smuggling' is visa fraud in the country of origin. In this method, a facilitator will provide fraudulent supporting documents to the visa issuing authority. Such documents can include birth certificates and sponsorship letters which may be used to support a fraudulent visa application submitted to a consular authority. The extent to which this occurs is so significant that some consular authorities are no longer able to give any credence to supporting documents in considering visa application requests.

Another type of 'visa smuggling' is by proxy. The visa can be delivered by mail or to a person other than the requester of the visa him/herself. For example, a travel agency may apply for a visa on behalf of the applicant, and complete the entire process to obtain a fraudulent visa in the migrant's passport. The consular authorities then can only rely on the information provided in the application form to deliver the visa, with no interview conducted to cross-check the information at the embassy/consulate, hence making it difficult to detect fraudulent applications.

Other forms of document abuse

Abuse of approved destination status processes can result in successful irregular entry of another person. With this method, travel agencies in origin countries have been approved by destination countries to issue visas. After such visas have been used for legal entry, the passports are returned to the country of origin with exit stamps, while the person to whom the visa was issued remains in the destination country. This can be more easily done where there is no exit control.

There have also been cases of counterfeit residency cards being issued to smuggled migrants, who will enter the destination country as if they are residents returning. Often, smuggled migrants are coached by smugglers before their travel on aspects of the destination country and their fictitious lives there, so that they may evade detection upon being questioned by law enforcement and border officials. In other cases, the true resident, usually of the same nationality as the migrant, either lends or provides his or her documents to a migrant in order for them to enter the country of destination as a look-a-like.

The role of corruption

The role that corruption plays in migrant smuggling by air is significant and can take place at any stage of the smuggling process from origin through transit to destination. An organized crime group can take over entire law enforcement and airport staff at a given airport, purely through corruption.

Corruption to facilitate migrant smuggling by air can be both high and low level, from consular officials through to cleaning staff at airports. At the higher level, visa-issuing authorities and immigration directors will receive a benefit to provide a service or turn a blind eye. The replacement of a bio-data page in a passport for instance, requires the involvement of people or a person with access to official techniques but more often the role of corruption comes into play where a government official issues genuine documents by fraud rather than altering a document. An example of this is where a criminal obtains a falsified birth certificate for instance, which can in turn be used to obtain a genuine passport.

At the low level, immigration, airport and airline staff may be paid to do something as small as unlock a door or stamp a document without closely inspecting it or. As mentioned, corruption has been used to overcome the hurdle of poor-quality falsified or fraudulent documents.

Corruption may also be facilitated by the use of blackmailing or intimidation; there have been reports of threats made to the lives of people who have initially refused to be corrupted.

2. Combating migrant smuggling by air

Actors involved in combating migrant smuggling by air

There are several actors who can be involved in combating migrant smuggling by air. Beyond criminal justice actors, policy-makers, airline and airport authorities, media, NGOs and international organizations can also be involved in the response.

Criminal justice actors

International and regional police organizations have a significant role to play in combating migrant smuggling by air. For instance, Europol supports Member States in their investigations and disseminates intelligence that can have a preventative function. Other regional police organizations similarly share information on criminal activities throughout their respective regions including those relating to the crimes included in the Migrant Smuggling Protocol.

Interpol is also involved in capacity building and information exchange and has criminal databases pertaining to DNA and fingerprints, as well as lost and stolen travel documents.

On migrant smuggling specifically, a targeted approach to dismantling smuggling organizations includes analysis of airport procedures and specialized training.

Border security

Border security can be managed by various agencies including law enforcement, immigration authorities and military, acting either independently or together.

The role of law enforcers at all levels is key. In some countries, law enforcement authorities control and investigate suspected cases of smuggling, often as specialized task forces. In other countries, border police will conduct preliminary investigations and hand over their findings to police forces specialized in particular types of investigation for instance, those involving organized crime groups.

Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the European Union, aims at improving the security of the external borders of the Member States of the European Union and promoting inter-agency and international cooperation and coordination and coherence of the activities of member states and European Union Institutions.

Law enforcement cooperation in the Schengen region

The Schengen agreement has shifted border control to the external borders of the Schengen region. In response, Member States agreed to cooperate with and enhance the capacities of countries external to the area.

In some countries, immigration authorities have exclusive authority in respect of migrant smuggling. In other countries, customs officers are the first line of border control. In other countries again, the roles of immigration and customs officials are merged. Airline Liaison Officers can be in charge of both immigration and customs. There is also cooperation between customs and police, sometimes with joint operations between them.

Airport authorities and personnel

Effective legislation is key to ensuring that airports play a role in combating migrant smuggling by air. However, carrier provisions generally do not apply to airports.

Though there is awareness among airport authorities of the phenomenon of migrant smuggling by air, there is sometimes reticence to get involved in addressing it. The responsibility to do so rests with aviation security; airports need to comply with certain security rules and International Air Transport Association (IATA) regulations to become accredited. This offers a balance between security and commercial interests. Airports are given incentive to cooperate more closely in the response to migrant smuggling where they understand that providing a better service to passengers requires better security services.

Generally while airports are cognizant of their responsibility to address entry and exit security issues, there is a lacuna with respect to international transit areas. While airports may operate the facilities in these zones, they cannot necessarily be held responsible for acts or omissions in these areas under carrier provisions of the Migrant Smuggling Protocol.

It has been pointed out that Annex 9 of the ICAO Convention on International Civil Aviation offers a model for inadmissibility in this respect; Annex 9 embodies Standards and Recommended Practices (SARPS) and guidance material pertaining specifically to the facilitation of landside formalities for clearance of aircraft and passengers, goods and mail, with respect to the requirements of customs, immigration, public health and agriculture authorities and as such provides a frame of reference for managing methods and procedures at international airports.

Airport liaison officers

In several airports, Airport or Immigration Liaison Officers (ALO) from transit and/or destination countries have been appointed to support local police units and enhance strategic cooperation. The role of ALOs is crucial; they work in a region under the authority of an Embassy and advise and train local immigration officers, and gather and share intelligence.

Airline authorities and personnel

By virtue of Article 11(3) of the Migrant Smuggling Protocol, States are required to adopt measures to require commercial transportation carriers to ascertain that all passengers have the required travel documents, including sanctions for failure to do so. By virtue of these carrier provisions, airlines have the responsibility to ensure that every passenger is in possession of documents satisfactorily establishing their identity and any necessary visa for the destination country if required. Airlines can be fined (depending on the level or quality of the forgery concerned) and are responsible for detaining, escorting and returning irregularly documented passengers.

Different countries have different ways of enforcing and implementing carrier provisions. In some countries, fines are reduced where staff have received appropriate training and are cooperative. This has been shown to offer airlines strong incentive to comply with requirements.

Cooperation between airline staff and law enforcers is key to combating migrant smuggling by air. In some countries, where an airline staff member intercepts a potential situation of migrant smuggling, they will refer to immigration officers who profile the person and refer the situation on to higher authorities if the initial suspicion of migrant smuggling is confirmed. In some countries, the airline staff member would refer the matter to an ALO if there is one present, or to the police.

The person or persons of concern would then be refused entry and deported immediately, subject to national legislation and observation of the principle of non-refoulement.

Embassies and consular staff

Embassies and consular staff have the power to issue or deny visas. Some countries appoint anti-fraud officers in consulates. Police posted in different countries will often work closely with consular officials to detect fraudulent visa applications.

Media

The role of the media is crucial for disseminating information about migrant smuggling by air, not only to deter migrant smugglers but also to inform would-be migrants about the dangers of placing oneself into the hands of smugglers. The role of the media also signals a need for anti-smuggling actors to be equipped to respond to changes in movements and flows that can result from smugglers learning of changes in migration policies and counter-smuggling measures, for instance. It is also imperative that accurate and appropriate messages be conveyed to the media, so that information conveyed is balanced and that smuggled migrants are not stigmatized.

NGOs, International organizations and service providers

The role of NGOs and International Organizations at the national level is significant. The role played by NGOs, International Organizations and other service providers is particularly relevant with respect to asylum claims made by suspected smuggled migrants and where unaccompanied minors are involved. Cooperation of NGOs is crucial in respect of cultural mediation, strengthening information, protection of asylum seekers and potential victims of human trafficking or other crimes, as well as access to information on countries and communities of origin.

Key legislative challenges

Not all countries have put migrant smuggling high on their agenda. This has meant that legislation is often inadequate to address the problem. There is often little public interest in the issue and there are also NGOs which campaign against responses, where there is misunderstanding about the relationship between migrant smuggling and broader migration issues. Some countries are yet to criminalize the elements of migrant smuggling as provided for in the Migrant Smuggling Protocol. This weakens the criminal justice response and often allows migrant smuggling to continue without any risk of law enforcement interference. Legislative weaknesses are often abused by smugglers; lack of strong legislation or penalties or weak enforcement creates 'safe havens' for smugglers.

Often cases are not brought to court and where they are, successful convictions are often met with penalties too low to have a deterrent affect. Legislation that is in place can often be too complex for those who are charged with implementing it. Situations where there has been an irregular entry are often not linked to smuggling related crimes, because of inadequate time and lack of resources for investigation. Furthermore, issues of jurisdiction can impede successful operations and prosecutions, where smuggling crimes are committed beyond the reach of interested criminal justice respondents.

Another problem that exists throughout many countries in the world is legislative confusion between migrant smuggling and human trafficking. A simple manifestation of this problem that can result where the crimes are not treated distinctly by legislation, relates to the issue of consent of the smuggled persons involved. Where grounds of consent are vitiated in circumstances that constitute human trafficking, legislative gaps in the law often mean that where consent is given no crime – whether of trafficking or smuggling – is considered to have occurred.

In addition or as an alternative to criminalizing irregular entry and residence, some countries now criminalize irregular exit, or apply administrative procedures and/or fines in lieu of criminalizing irregular exit or stay. Though this provides transit countries with a means of intercepting irregular movement, it is not prescribed by the Migrant Smuggling Protocol and can have serious adverse human rights implications.

Another common distinction between domestic legislation on migrant smuggling and the elements offered by the Migrant Smuggling Protocol is the element of material or financial gain. In some jurisdictions, material gain does not need to be proven in order to establish that migrant smuggling has occurred. In countries where the element of material or financial gain is not required to prove the offence of migrant smuggling, the acquisition of such gain may constitute an aggravating circumstance. The practical result of the omission of this element is that irregular migration that has been facilitated for non-profit reasons (for instance, for humanitarian or family reunion purposes) can be captured by legislation, contrary to the intention of the Migrant Smuggling Protocol.

Another reason that successful prosecution of migrant smugglers is often hampered is due to the fact that smuggled migrants are often deported before the conclusion of an investigation or case, meaning that they cannot participate in the criminal justice system as witnesses to migrant smuggling or potential victims of crime by virtue of having been smuggled. This is often due to law enforcement officials being more interested in the irregular entry or stay than they are in the smuggling-related aspects of the case, and through lack of legislation allowing smuggled migrants to remain in the country where they were intercepted in order to testify. Another reason is that

smugglers are often not identified when the irregular migrant is intercepted, meaning that the smuggler or smugglers are still at large. This is a particular challenge in respect of migrant smuggling by air, where the smuggler can minimize the risk of being intercepted by distancing him or herself from the migrant; as has been mentioned, the migrant may travel unaccompanied by anyone from the smuggling operation.

UNODC Model law against smuggling of migrants

The UNODC Model Law against Smuggling of Migrants has been developed by the United Nations Office on Drugs and Crime (UNODC) to assist Member States in becoming party to and implementing the United Nations Convention against Organized Crime and the Protocol against Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The Model Law offers legislative options for both civil and common law countries, and provides in-depth commentary to explain the purpose of various provisions, whether they are mandatory or optional and guidance on relevant principles.

For more information visit www.unodc.org

Key challenges in combating corruption

The key challenge in combating corruption is not the lack of legislation but rather its lack of enforcement; corrupt officials may only be transferred or removed from their posts rather than being prosecuted.

Corruption is often detected as a result of debriefings with intercepted smuggled migrants but can also be detected by the use of technical means or specialized investigations. Anti-corruption teams usually operate at a level higher than immigration officers. In some structures, a superior officer has the authority to investigate those who are junior to him or herself. If an ALO detects a corruption case, he or she can report it to an investigation team or delegate it to local authorities who are clearly not implicated in the suspected corruption. In cases involving suspected corruption of airlines staff, the senior management of the relevant airline would be informed.

Strengthening anti-corruption response requires training of individuals who may be approached by those attempting to corrupt them. Anti-corruption teams can provide training at the local level, or international resources such as the Interpol Anti-Corruption Training Academy can be utilised.

Other creative responses have successfully reduced instances of corruption. For instance, in one country immigration officers team up with a special security officer who has authority. In some consular processes, a senior officer has to double check approved visa applications. Other countries have had success by regularly and randomly rotating their agents and the teams that they comprise, often announcing new assignments immediately before the change takes place. Another strategy could be increasing the role played by ALOs along air routes used by migrant smugglers, extending their presence to include countries of transit.

The role of profiling

Selective targeting, or 'profiling' is amongst the most important and potentially effective forms of detection of migrant smuggling by air. Language barriers and resource restraints mean that not everyone can be questioned and not all documents can be thoroughly inspected. The effective use of selective targeting can allow bona fide travelers to be distinguished from potential migrant smugglers. Profiling of smuggled migrants alone is inadequate to address the crime of migrant smuggling where it does not serve the goal of identifying migrant smugglers.

Even where visas have been successfully obtained, the final permission to enter a country is granted or refused by the frontline customs or border official. Where these persons are sensitive to particular indicators, they are better able to target appropriate persons for interviewing and thereby increase chances of detecting the commission of migrant smuggling.

Key to successful profiling is local knowledge of people who are being profiled. Profiling can be done directly face-to-face, but also upstream through the analysis of data on computer programs ahead of the flight. In cases of late detection, authorities in the destination country can be contacted to intercept persons suspected of being smuggled migrants or migrant smugglers as soon as they land.

Selective targeting can be done by ALOs, immigration and custom officials, as well as airport and airline staff. All actors who are trained to do profiling (also known as scientific analysis, descriptive analysis, predictive analysis or passenger assessment) must also be sensitized to the potential issues of right abuse where profiling is done inappropriately.

The role of technology

The role that technology can play in detecting migrant smuggling depends on the use that is made of that technology. Technology does not replace skilled personnel. Any technology that is introduced into procedures should be supported with consistent and regular training of personnel who will use the technology as well as adequate resources to maintain the technology. It is crucial that any approach to use of technology in addressing migrant smuggling is cognizant of the human right issues at play.

Iris and face recognition technology

In certain regions of the world, iris and / or face recognition technology is being developed as well as using microchips containing identification data in passports. This not only makes fraud more difficult, but makes processing travelers more efficient therefore freeing up human resources to control documents in airports. Such technology is used not only for passenger monitoring; iris recognition technology is increasingly being used for airport staff.

Scanning technology

Passport scanners serve to retrieve data and perform basic checks on the genuinity of travel documents; they do not replace the role of officials in detecting forgery. This highlights the need to strengthen profiling capacities of officials using this technology to gain value from it. Using profiling in combination with technology should be emphasized as necessary, particularly where officials are overwhelmed by technology and divert their attention away from passengers.

Video Surveillance

The use of video surveillance can be an effective way of detecting smuggling related crimes at airports. Where there is a dedicated team of observers in place, video surveillance can be a strong deterrent and an efficient tool to identify smuggling facilitators, who they have contact with and the planes they board and disembark.

Harmful technology

More needs to be done to address the security gaps that are left by certain types of technology. For instance, in some cases members of 'Frequent Flyers' programs can bypass certain document

control steps. This is a privilege meant to facilitate passenger travel, but can be exploited by smugglers and other criminals. This conflict between economic and security interests must be addressed to strengthen response to migrant smuggling by air.

The role of document control

Where documents are suspected to be falsified, the identifying official reports it. In origin countries, the documents are seized. In destination countries, these documents are either seized or can be returned along with the bearer of the document who is deported, unless humanitarian considerations apply. When deporting a person with a suspected fraudulent document, it is important that the deporting country informs the State which has the responsibility to destroy it so the document cannot be reused.

The improving quality of forged documents and the increase in fraudulently obtained documents has posed ever-more challenges in efficient document control. High quality forged documents may be undetectable by technology. This emphasizes the importance of individual border officials who may be able to detect potential migrant smuggling where a machine cannot. Furthermore, the recruitment of highly capable and motivated border officials is crucial.

Border officials should be supported by other measures, such as access to direct phone lines to request immediate assistance and to overcome language barriers. To overcome boredom and attention lapses, border agents should change duties regularly. Effective detection of fraud should also be rewarded, for instance, by relocation for periods to investigative teams.

Border officials should also be supported by training and capacity building measures. Reduction of document abuse in migrant smuggling by air requires effective, up-to-date and in-depth knowledge on the part of border officials. Competent and motivated agents should be identified and involved in 'train the trainers' programmes with regular follow-up and further training to ensure that knowledge is effectively disseminated and capacity is sustained. Language training is also key to effective migrant smuggling detection.

UNODC Model Forensic Document Laboratory Guide

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/agency development from the most basic to advanced capability. It aims at providing practical assistance for the establishment or upgrading of forensic document laboratories in the areas of staff skill and educational requirements to perform forensic document examinations and provide court testimony, intelligence alerts and training; acquire forensic science equipment, facilities, reference materials and databases; and provide general guidance for designing, establishing, and maintaining a forensic document laboratory.

For more information visit www.unodc.org

3. Key recommendations to strengthen response

As highlighted in the Migrant Smuggling Protocol, preventing and combating migrant smuggling requires that migrant smugglers be targeted for investigation and prosecution, that smuggled migrants be protected and assisted, and that anti-smuggling actors cooperate to these ends. In support of these goals, the following responses are recommended:

Involve smuggled migrants in the criminal justice process

- Adequate time should be devoted to debriefing suspected smuggled migrants and migrant smugglers instead of immediately deporting them so that information can be gathered, and a full report with material facts can be prepared. Dedicated prosecution units can be placed in airports, and statements can also be taken from ALOs, arresting officers, airline staff and witnesses.
- Measures to encourage the cooperation of smuggled migrants with the law enforcement process should be considered as a means to strengthen the criminal justice response and conviction rates of smugglers.

Use human resources more effectively

- Human resources need to be effectively and flexibly deployed so as to keep up with the crime of migrant smuggling; for instance officers should be moved where the crime shifts on the basis of information provided by intelligence.
- Capacity building in countries of origin and transit must be prioritized and strengthened. Stronger information sharing should be undertaken in respect of existing training programs. For instance, a database within an international organization could be established so that information about training and capacity building against migrant smuggling can be disseminated so as to avoid duplication and strengthen cooperation.
- Air control should factor in timeslots that allow for better use of human resources, to avoid overwhelming staff with early morning and evening flights.

Strengthen airport security

- Stronger accreditation standards should be put in place by national and international aviation administration authorities.
- Management of airports should ensure effective management of airport staff. Airports could be divided into security zones, where systemic screening (including background checks of criminal records) would be conducted of staff who need to gain access to higher security zones.
- Simple measures can be implemented to ensure that passengers are more traceable (for instance, by providing flight numbers on, and issuing tickets for buses that convey people between airplanes and airport terminals).
- To reduce the abuse of transit zones and individuals dispersing, transit should be assisted where possible or surveyed by technological and human resources.

Strengthen cooperation with airport and airline authorities and personnel

- Cooperation should be strengthened between law enforcement and airport authorities at the earliest possible stage. The modern open spaces that facilitate passenger contamination are difficult to control and pose security challenges. This can be avoided if border and law enforcement officials are involved in airport security as early as the design phase.
- Cooperation between various stakeholders could be strengthened through meetings within IATA at the international level, convened by the Control Authority Working Group (CAWG).
- Liaison Officers should be placed in airports for long enough that they can establish good working relationships with local airport authorities as well as airport and airline staff. When there is no liaison officer, airport managers or other personnel should be encouraged to have direct contacts with law enforcement personnel at relevant embassies.
- Investigators should build partnerships and harness the information gathering potential of airports and airlines. They should gain access to security company and airline information dissemination networks as well as airport and airline statistics. Airport security operations can exchange information on passenger profiling, watch lists, check-in, boarding and disembarkation procedures, and effective use of human resources
- Closer cooperation should be formed with International Air Transport Association (IATA) and the International Civil Aviation Organization (ICAO) with respect to standard setting, so that responses to migrant smuggling can be standardized.

Strengthen multi-sector, multi-agency cooperation

- Law enforcement responses to migrant smuggling by air must be complemented with responses that aim to address the root causes of the phenomenon. Responses must be holistic and innovative, and compatible with poverty alleviation and development initiatives as well as awareness raising efforts.
- Given that human beings are at the core of migrant smuggling, law enforcement, border and immigration officials, need to strengthen relationships with NGOs, international organizations and local service providers. Communication needs to be improved between NGOs and law enforcement actors to improve understanding about the respective roles of both actors. The role of law enforcers in combating migrant smuggling needs to be emphasized so that NGOs and civil society organizations understand that the target of law enforcement response to migrant smuggling is the criminal smugglers, not the migrants.
- Lessons should be learnt from countries that have implemented multi-agency approaches to address migrant smuggling resulting in stronger information sharing and intelligence, operational support, strategic assessments and policy recommendations through different agencies. Such multi- and interagency coordination and cooperation should be replicated elsewhere to facilitate information sharing and strengthen responses internationally.

Strengthen and broaden information gathering and sharing

- Information gathering and sharing on migrant smuggling trends, modus operandi and timing issues in airports needs to be strengthened to increase law enforcement capacity to stay ahead of adapting smuggling routes and methods. Such information sharing should not only happen within countries but also between them.

- Networks for sharing information are often informal, relying on personal interactions between individuals. Such information sharing should be systematized and formalized. Information can be further disseminated through regional border and police organizations as well as international organizations.
- Regional information sharing systems could be replicated on a global level. For instance, a good practice to be learnt from is the European ICONet (Information and Coordination Network for Migration Management); a secure web-based information management system between border authorities.

Strengthen operational cooperation

- Regional joint-operations should be considered. Some regions have air border joint operations where officers from different countries will work on the same airport and disperse new information to their respective countries. Such information can further be dispersed through regional organizations such as Frontex and regional police organizations.
- Cooperation and coordination between countries and agencies at a national, regional and international level needs to be strengthened. Networking is key to ensuring information flow. Bilateral networking should evolve into multilateral networking. Cooperative mechanisms should be put in place to facilitate greater cooperation between origin, transit and destination countries to ensure sustained mutual exchange. Multinational teams should be put in place in international hubs so as to overcome language and cultural barriers to detecting and interviewing potential smuggled migrants and migrant smugglers.

UNODC Basic Training Manual on Investigating and Prosecuting Migrant Smuggling

The modules contained in this training manual address the concepts and categories of migrant smuggling, the role of smuggled migrants and migrant smugglers 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.

<http://www.unodc.org/unodc/en/human-trafficking/publications.html>

For more information about UNODC's work against migrant smuggling contact UNODC's Anti-Human Trafficking and Migrant Smuggling Unit at

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or visit <http://www.unodc.org/unodc/en/human-trafficking/smuggling-of-migrants.html>