



Tool 5.11 Border control measures

Overview

This tool reviews provisions of the Trafficking in Persons Protocol relevant to cross-border measures and offers examples of promising practice.

There are a number of measures included in the Trafficking in Persons Protocol that States can take to make it more difficult for traffickers to move people across borders. These measures are also included in the Migrants Protocol.

Over recent years, as a result of various factors, border controls have been greatly reduced. The permeability of borders aids criminal organizations in the trafficking of persons, regionally and internationally. The technical capacity of border control agencies to detect and prevent trafficking is often inadequate and needs to be improved. For instance, at border crossings in many States there are no telecommunication facilities or even manual record-keeping of the crossings of commercial carriers.

Border control agencies and border police lack staff, infrastructure and funding. Criminal networks benefit from that situation and are transporting groups across borders where there are no regular inspections. For more information about cooperation between States, refer to Tools 4.7 to 4.10.

Strengthening border controls and cooperation across borders

Under article 11 of both the Trafficking in Persons Protocol and the Migrants Protocol, States parties are required to strengthen border controls to the extent possible and, in addition to measures pursuant to article 27 of the Organized Crime Convention, to consider strengthening cooperation between border control agencies, including by the establishment of direct channels of communication. Under article 12 of both Protocols, States parties are required to ensure the integrity and security of their travel documents. Under article 13 of both Protocols, 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.

The practical outcome of the requirement to strengthen basic border controls is to make it more difficult for traffickers to use conventional means of transport to enter countries. Strengthening measures include making border controls more effective and preventing the misuse of passports and other travel or identification documents. Cross-border cooperation is recommended. Many of the issues raised by cooperation between border-control agencies in different States will be similar to those raised by cooperation between law enforcement agencies (see the previous tools in this chapter).

Measures recommended by the Organization for Security and Cooperation in Europe

- Consider taking measures that permit, in accordance with domestic law, the denial of entry, the revocation of visas or possibly the temporary detention of persons implicated in committing offences as defined by the legislation in force.
- Consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.
- Without prejudice to international commitments in relation to the free movement of people, strengthen, to the extent possible, border controls as may be necessary to prevent and detect trafficking in human beings.
- Adopt legislative or other appropriate measures to prevent, as far as possible, means of transport operated by commercial carriers from being used in committing offences, as defined by the provisions against trafficking.
- Where appropriate, and without prejudice to applicable international conventions, oblige 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 valid travel documents and, in accordance with domestic law, take the necessary measures to provide for sanctions in the case of violation.
- An important additional recommendation of OSCE is that States should not prosecute trafficked persons for trafficking-related offences such as holding false passports or working without authorization, even if they agreed to hold false documents or to work without authorization.



The OSCE Action Plan to Combat Trafficking in Human Beings can be downloaded at:

www.osce.org/documents/pc/2005/07/15594_en.pdf

Security and control of documents

Around the world, falsification of all kinds of legal documents is occurring on a large scale. New technologies mean that false documents can be more easily produced and criminal networks are able to provide trafficking victims with false passports and other travel documents such as visas. Evidence also points to instances of corruption among immigration officers in league with trafficking networks and of corrupt embassy personnel providing visas for people being 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 in the process of being developed 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.

Promising practice

One example of such technology is the European image archiving system called “False and Authentic Documents” (FADO). FADO makes possible the speedy verification of documents and fast, comprehensive notification of relevant law enforcement or immigration authorities in other participating States when misuse of a document or a fraudulent document is detected.



http://europa.eu.int/comm/justice_home/fsj/freetravel/documents/printer/fsj_freetravel_documents_en.htm

Carrier sanctions

A number of basic measures recommended to help control the use of public carriers by traffickers are provided for in article 11 of the Trafficking in Persons Protocol.

Article 11 of the Trafficking in Persons Protocol

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 offences established in accordance with article 5 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.

States are obliged to ensure that commercial carriers are required to ascertain that all passengers possess the necessary travel documents required for entry into the destination State and that failure to do so results in appropriate sanctions—these are called “carrier sanctions”.

Through this article, the Trafficking in Persons Protocol intends to prevent the use of commercial carriers as a means of transport in the trafficking of persons, by making it more difficult for traffickers to use conventional means of transport in the commission of their crime. These provisions are identical to the corresponding provisions of the Migrants Protocol. The implementation of such provisions may differ from country to country (depending on the means preferred by traffickers) but the underlying domestic legislation enacted to give effect to these provisions will remain the same.

Drafters of legislation to implement the requirements of article 11, paragraphs 2 and 3, 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, such as corporations.
- 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.

Promising practice

See also Operation Paladin Child (United Kingdom), in Tool 5.4 above.

ECOWAS Initial Plan of Action against Trafficking in Persons (2002-2003)

To address the need for better border measures and the security and control of travel documents, ECOWAS developed an action plan that includes the following provisions:

1. States shall establish procedures to verify whether a person who is the victim of trafficking in persons is a national or has the right of permanent residence in the State of origin, and to provide such travel documents or other authorization as may be necessary to enable a victim of trafficking in persons who is without proper documentation to travel to and re-enter its territory, at the request of a receiving State.
2. States, at the request of another State, when presented with suspected cases of trafficking in persons, shall verify, within a reasonable time, the validity of travel and identity documents issued or purported to have been issued in their name and suspected of being used for trafficking in persons.
3. States shall take such measures as may be necessary, within available means (a) to ensure that the birth certificates and travel and identity documents they issue 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 they issue and to prevent their unlawful creation, issuance and use.
4. States shall encourage commercial carriers to take precautions against their means of transport being used in the trafficking of persons and require, where appropriate and without prejudice to applicable international conventions, such carriers to ascertain that all passengers are in possession of travel documents required for entry into the receiving State. States shall further adopt provisions requiring that the carrier hold all documents for minors travelling alone for them until they have reached their destination.

By implementing these provisions, ECOWAS States aim to ensure that trafficking victims are quickly identified and documented and that the falsification of documents is reduced. In addition, through the requirement that carriers take part of the responsibility for the care of travel documents, a significant additional workforce is added to the document inspection and verification process.

Border Liaison Officer Mechanism of the United Nations Office on Drugs and Crime

The aim of a UNODC project entitled “Development of cross-border law enforcement cooperation in East Asia” was to strengthen cross-border law enforcement cooperation to address drug trafficking, in particular by helping to build relationships between local border officials and their counterparts on the other side of the border. The project was run from the UNODC Regional Centre for East Asia and the Pacific and covered the six countries that participate in COMMIT.

Under the project, UNODC provided training support (through its computer-based training programme, meetings, workshops and study trips) and necessary technical support. Beyond the provision of this support, it is intended to develop a long-term sustainable cooperative mechanism to enable effective operation of technical support. Staff of the border liaison offices established by countries participating in the project come from a range of law enforcement agencies (specialized police, border police, border army, customs, local police, immigration, etc.). The border liaison offices are staffed by between two and five officers for a sustained period, to foster strong cooperation between individuals.

Towards the achievement of goals set out in the COMMIT memorandum of understanding, the six member States agreed on a subregional plan of action that outlined 11 thematic areas for cooperation. To this end, the six Governments agreed to seek to expand the mandate of the border liaison office mechanism to include human trafficking. UNIAP, the secretariat for the COMMIT process, is working with UNODC to take forward this initiative, which is a hallmark example of multi-agency and multilateral law enforcement cooperation.



Source:

www.unodc.un.or.th/law/D91/ad-ras-99-d91.htm

Police cooperation agreements

States are increasingly recognizing the need to cooperate across borders to combat cross-border crime, including trafficking in persons.



INTERPOL provides a non-exhaustive list of cooperation agreements between INTERPOL member States at the following link:
www.interpol.int/public/ICPO/LegalMaterials/cooperation/AgrListPolice.asp

European Union

In a communication to the European Parliament and the Council entitled “Enhancing police and customs cooperation in the European Union” (Com (2004) 376), the European Commission highlights the need for police forces and customs administrations of member States to enhance their communication in order to strengthen the security of the region.



More information is available at:
<http://europa.eu/scadplus/leg/en/lvb/l16000.htm>



To see the cooperation agreements the European Union has entered into with Canada, China, the Hong Kong Special Administrative Region of China, India and the Republic of Korea visit:
<http://europa.eu/scadplus/leg/en/s22007.htm>

Europol and Australia

On 27 September 2007, the Australian Parliament ratified a cooperation agreement with Europol to enhance cooperation against international crime. The agreement facilitates the exchange of operational information between Europol and the Australian Federal Police. Furthermore, an Australian Federal Police liaison officer is based with Europol to facilitate cooperation, pursuant to an agreement entered into on 15 February 2007.



For more information on the cooperative arrangements between Europol and Australia, visit:
www.europol.europa.eu/index.asp?page=news&news=pr071005.htm

Bosnia and Herzegovina and Bulgaria

Bosnia and Herzegovina and Bulgaria entered into a police cooperation agreement on 25 September 2007 to strengthen the operational cooperation between the police forces of the two countries, with an emphasis on trafficking in persons.



Source:

<http://bosnianews.blogspot.com/2007/09/agreement-on-police-cooperation-signed.html>

Italy and Slovenia

In August 2007, Slovenia and Italy entered into an agreement on cross-border police cooperation. The agreement allows police officers to track suspects up to 30 kilometres into the other country and allows joint patrols to operate up to 10 kilometres beyond the border on both sides. The agreement also addresses collaboration in cross-border monitoring and tracking, and operations and investigation by joint patrols. It determines the legal aspects of this cooperation, the rules governing the entry, exit and residence of police officers while working in the other country and other rules, responsibilities and liabilities which apply to them while conducting investigations in the other country.



Source:

www.ukom.gov.si/eng/slovenia/publications/slovenia-news/5300/5307

For further promising cooperative practice, see Tool 4.10.