



UNODC

United Nations Office on Drugs and Crime

International Framework for Action

**To Implement the Smuggling
of Migrants Protocol**

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

International Framework for Action To Implement the Smuggling of Migrants Protocol



UNITED NATIONS
New York, 2011

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Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.

Acronyms

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| ILO | International Labour Organization |
| INTERPOL | International Criminal Police Organization |
| UNHCR | Office of the United Nations High Commissioner for Refugees |
| UNODC | United Nations Office on Drugs and Crime |

Abbreviations*

| | |
|----------------------------------|---|
| Convention against Torture | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment |
| Convention on the Law of the Sea | United Nations Convention on the Law of the Sea |
| Migrant Workers Convention | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| Safety of Life at Sea Convention | International Convention for the Safety of Life at Sea |
| Search and Rescue Convention | International Convention on Maritime Search and Rescue |
| Refugee Convention | Convention relating to the Status of Refugees |

*The non-standard abbreviations contained in this list are used in the tables of the Framework for Action.

Acknowledgements

The International Framework for Action to Implement the Smuggling of Migrants Protocol was drafted by Ms. Marika McAdam, with support from the following staff at United Nations Office on Drugs and Crime headquarters: Ms. Morgane Nicot, Ms. Alexia Taveau, Ms. Silke Albert and Mr. Martin Fowke.

The United Nations Office on Drugs and Crime is grateful to the following experts who contributed to this resource:

Ms. Rhodora Abano, Centre for Migrant Advocacy
Mr. Robert Archer, International Council on Human Rights Policy
Ms. Claudia Baroni, United Nations Office on Drugs and Crime
Mr. Sebastian Baumeister, United Nations Office on Drugs and Crime Regional Centre for East Asia and the Pacific
Ms. Michelle Brané, Women's Refugee Commission
Mr. Alexandre Devillard, United Nations High Commissioner for Refugees
Mr. Michael Flynn, Global Detention Project
Mr. Bill Frelick, Human Rights Watch
Ms. Anne Gallagher, Asia Regional Trafficking in Persons Project
Mr. William Gois, Migrant Forum in Asia
Mr. Emmanuel Jourda, Central Office for the Suppression of Illegal Immigration and the Employment of Foreigners without Residence Permits (OCRIEST) of France
Mr. Andrew Kim, Migrant Forum in Asia
Ms. Nicola King, Division for Ocean Affairs and the Law of the Sea of the Office of Legal Affairs of the United Nations
Ms. Anja Klug, United Nations High Commissioner for Refugees
Ms. Michele Levoy, Platform for International Cooperation on Undocumented Migrants
Mr. Grant Mitchell, International Detention Coalition
Mr. Shabarinath Nair, International Catholic Migration Commission
Ms. Ann-Charlotte Nygard, International Centre for Migration Policy Development
Ms. Pia Oberoi, Office of the United Nations High Commissioner for Human Rights
Mr. Ric Power, United Nations Office on Drugs and Crime
Ms. Anna Giudice Saget, United Nations Office on Drugs and Crime
Mr. Adriano Silvestri, European Union Fundamental Rights Agency
Ms. Birgit Siwy, International Organization for Migration
Ms. Susu Thatun, United Nations Children's Fund
Ms. Candice Welsh, United Nations Office on Drugs and Crime

The development of this tool would not have been possible without the financial support of the Government of France.

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Part one

Introduction to the Framework for Action

I. An introduction to migrant smuggling

1. Global migration today is one of the great by-products of globalization, driving human progress and development while diffusing cultures and ideas around the world. Yet the exploitation of movement of people by profit-seeking criminals represents a darker side of the phenomenon. As natural disaster and conflict create unsafe situations for the people affected, and as unemployment and poverty increase, demand for movement far exceeds the possibilities to cross borders legally. The need for people to move may be exacerbated by human rights violations and persecution. Migrant smugglers supply to this demand, preying on vulnerable people for profit.
2. Migrant smuggling is a complex, ever-changing crime that takes different forms in different parts of the world. The criminals who smuggle migrants operate with varied levels of organization. There are not only mafia-like, hierarchically structured organized criminal groups but also more loosely connected networks of criminals, all playing their own particular part at various points in the smuggling process. The varied level of organization and modus operandi of organized criminal groups that may be involved make it difficult to dismantle them. However, unless these organized criminal groups are dismantled at all points throughout the trafficking process, they will continue to operate, adapting their methods to overcome the challenges posed by police operations at specific points along the smuggling route, often at the expense of the safety of the smuggled migrants.
3. Tackling the smuggling of migrants requires a comprehensive approach. Efforts targeting one element of the phenomenon may not necessarily result in reduced smuggling. For instance, where efforts are focused primarily on strengthening border controls, irregular migrants may increasingly resort to services provided by profit-seeking smugglers. Where authorities of countries of origin, transit and destination do not effectively cooperate in their efforts to prevent migrant smuggling, smugglers may simply take advantage of weak criminal justice responses in some of those countries to forge new routes through which to commit their crimes.
4. Criminal activities of smugglers undermine the capacity of States to safeguard their own sovereignty and combat crime and corruption both within and across their borders. Where States respond to migrant smuggling by tightening their immigration policies, the result may be reduced opportunities for regular migration and increased demand for smuggling services to circumvent increasingly strict immigration regimes. This can simultaneously hamper the ability of States to fulfil their domestic and international obligations to protect their citizens at home and abroad and other people within their jurisdiction.
5. Where smuggling of migrants cannot be prevented, the rights of identified smuggled migrants must be protected. The lives of smuggled migrants are often put at risk: thousands of smuggled migrants have suffocated in containers, perished in deserts or drowned at sea. Migrant smugglers often conduct their activities with

little or no regard for the lives of the people whose hardships have created a demand for smuggling services. Survivors have told harrowing tales of their ordeals: people crammed into windowless storage spaces or forced to sit still in urine, seawater, faeces or vomit, deprived of food and water, while others around them die and their bodies are discarded at sea or on the roadside. In addition, smuggled migrants may be refugees forced to rely upon the services of smugglers in a bid to seek asylum. Smuggled migrants may have become victims of crime during or as a result of the smuggling process. The fact that a person has consented to being smuggled does not mean that he or she has necessarily consented to the treatment he or she receives throughout the process. Smuggled migrants are vulnerable to exploitation, with many beginning their journey as smuggled migrants and becoming victims of trafficking.

6. In short, smuggling of migrants and related activities can jeopardize the lives and safety of migrants, while generating enormous profits for the criminals involved and fuelling corruption and organized crime in countries of origin, transit and destination. Migrant smuggling is therefore a multifaceted transnational crime requiring a multifaceted transnational response.

II. An introduction to the Smuggling of Migrants Protocol

7. The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Smuggling of Migrants Protocol)¹ was adopted by the General Assembly in its resolution 55/25 and entered into force on 28 January 2004. To date, 124 United Nations Member States are parties to the Smuggling of Migrants Protocol.² The remaining 69 Member States have yet to become party to the Protocol.

8. The purpose of the Smuggling of Migrants Protocol is to “prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants” (article 2). In other words, the Protocol sets out to promote cooperation to target criminal smugglers and protect those they smuggle.

9. Article 3 of the Smuggling of Migrants Protocol defines smuggling of migrants as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”³

¹United Nations, *Treaty Series*, vol. 2241, No. 39574.

²Current information on the status of States parties to the Smuggling of Migrants Protocol is available from <http://treaties.un.org>. [[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&lang=en]] accessed 19 August 2010

³Article 3 of the Smuggling of Migrants Protocol adopts a wide approach to the notion of “migrant” that includes both voluntary and involuntary movements, thus encompassing refugees for the purpose of the Protocol. A distinction, however, must be drawn between migrants who are generally accepted as being persons who move voluntarily and refugees who do not, and furthermore, who may have no other choice but to use smugglers in order to escape persecution. Refugees have specific rights under international law, primarily by the Convention relating to the Status of Refugees (the 1951 Convention) (United Nations, *Treaty Series*, vol. 189, No. 2545), which is recognized by article 19, paragraph 1, of the Smuggling of Migrants Protocol. These elements are to be taken into account when considering the interpretation and the implementation of the Smuggling of Migrants Protocol.

10. Article 6 of the Protocol requires the criminalization of such conduct. In addition, article 6 requires States to criminalize the conduct of “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.

11. Article 6 therefore requires States to establish as an offence or as offences the following conduct:

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

12. In short, the combination of the following elements constitutes migrant smuggling and related conduct:⁴

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

13. Furthermore, article 6 of the Smuggling of Migrants Protocol requires States to criminalize producing, procuring, providing or possessing fraudulent travel or identity documents when that is done for the purpose of enabling the smuggling of migrants.⁵

14. The United Nations Convention against Transnational Organized Crime,⁶ which the Smuggling of Migrants Protocol supplements, defines “organized criminal group” as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”.⁷

15. Lack of empirical research on the link between transnational organized crime and migrant smuggling makes it difficult to arrive at generalizations about this link at a global level. Generally, experts believe that most migrant smuggling is not committed by hierarchically structured, mafia-like organizations but rather that networks evolve and cooperate with each other on the basis of market forces to serve profit motives. Such networks of actors involved in smuggling have been likened to business networks, in which individual actors or groups of actors in the network perform specialized functions within the overall process. Such networks

⁴The term “migrant smuggling” refers here to all the elements that constitute migrant smuggling and related crimes.

⁵During the negotiations on the Protocol, States discussed the inclusion of the procurement of illegal residence in article 3 before eventually agreeing on covering that aspect in article 6.

⁶United Nations, *Treaty Series*, vol. 2225, No. 39574.

⁷Article 2, subparagraph (a), of the Organized Crime Convention.

can be small or large, connecting to each other across international borders. The definition of “organized criminal group” contained in the Organized Crime Convention encompasses such smuggling networks.

III. Why elaborate the Framework for Action

16. Although the vast majority of the Member States of the United Nations have ratified the Smuggling of Migrants Protocol, most do not have dedicated action plans or strategies to respond to the issue. Responses to migrant smuggling should be evidence-based and comprehensive. Where migrants are simply detained and returned to countries of origin without investigating the actors involved in smuggling those migrants, the criminal processes at work continue unchallenged. Where border controls are strengthened without addressing the root causes of irregular migration and demand for smuggling services, the modus operandi of smugglers will simply be adapted. Where opportunities to migrate safely and regularly are not provided as part of a holistic response to migrant smuggling alongside measures to address the root causes of irregular migration, the demand for migrant smuggling services may only increase.

17. These considerations highlight the need for the International Framework for Action to Implement the Smuggling of Migrants Protocol (Framework for Action), in order to harmonize and coordinate a holistic and global response to the phenomenon in countries of origin, transit and destination.

18. The Conference of the Parties to the United Nations Convention against Transnational Organized Crime, at its fourth session, held in Vienna from 8 to 17 October 2008, welcomed the efforts of the Secretariat to make available tools that would support the implementation of the Organized Crime Convention and the Protocols thereto (Conference decision 4/5). While the Framework for Action is not offered in direct fulfilment of the Smuggling of Migrants Protocol, it has been created with the strong commitment of the United Nations Office on Drugs and Crime (UNODC) to doing so in mind.

IV. What is the Framework for Action

19. The Framework for Action is a technical assistance tool that assists Member States to implement the Smuggling of Migrants Protocol. The Framework for Action clarifies the objectives of the Smuggling of Migrants Protocol and recommends operational measures that can be taken to achieve these objectives in practice.

20. The Framework for Action is anchored in the purpose of the Protocol: to prevent and combat the smuggling of migrants, as well as to promote cooperation among States parties to that end, while protecting the rights of smuggled migrants.⁸ Mirroring these purposes, the Framework for Action is divided into four tables:

⁸Article 2 (Statement of purpose) of the Smuggling of Migrants Protocol.

- Prosecution of migrant smugglers
- Protection of the rights of smuggled migrants
- Prevention of migrant smuggling
- Cooperation to these ends

21. The objectives, standards, measures and indicators provided correlating to Protocol objectives are drawn from relevant international instruments, as well as political commitments, international standards, guidelines and best practices aimed at a comprehensive approach to addressing migrant smuggling.

22. The Framework for Action aims to support origin, transit and destination countries to identify gaps in their own action plans, strategies, policies and legislative and institutional frameworks with respect to migrant smuggling, and put in place appropriate measures to fill them. Taking into consideration the wider issues at play in the phenomenon of migrant smuggling, a holistic approach is taken to promote coordination, cooperation and respect for the rights, obligations and responsibilities of States and individuals under international law, including human rights, humanitarian and refugee law.

23. The measures included in the Framework for Action are non-exhaustive and are intended to be complemented by measures as may be required to strengthen prosecution, protection, prevention and cooperation. Furthermore, the measures outlined may not be appropriate in all contexts; they are recommended here to assist States in developing approaches that are affective in the context concerned.

24. Beyond supporting States' efforts to implement the Smuggling of Migrants Protocol, it is hoped that the Framework for Action will assist non-State actors by guiding their work in supporting Member States to fulfil their Protocol commitments to prevent migrant smuggling, protect the rights of smuggled migrants and cooperate to those ends.

V. Main cross-cutting challenges in the fight against migrant smuggling

25. A complex and multifaceted crime cutting across various issues, migrant smuggling is inextricably linked to transnational organized crime, migration management, border control, human rights and refugee protection issues. These diverse but inter-related considerations mean that combating migrant smuggling requires a range of nuanced responses from a range of actors.

26. There are a significant number of States parties to the Smuggling of Migrants Protocol, but expression of political will alone is inadequate in the absence of action to fulfil the various obligations committed to by ratifying the Protocol. The following challenges have been identified as impediments to full implementation of the Protocol: (a) insufficient prevention and awareness; (b) lack of data and research; (c) lack of legislation; (d) inadequate policies and planning; (e) weak criminal justice system response; (f) inadequate protection of the rights of smuggled migrants; and (g) limited international cooperation.

A. Insufficient prevention and awareness

27. Often, the general public as well as relevant authorities do not adequately understand migrant smuggling. In some countries of origin, smuggling of migrants may not be perceived as a criminal activity that poses serious risks to the migrants and the societies concerned, but as a legitimate service that helps people to escape poverty, conflict or natural disasters. Similarly, in countries of destination and transit the criminality of migrant smuggling activities is often misunderstood, with the result that migrants themselves are stigmatized, as the wider issues at play are not taken into consideration. Without a full understanding of the reasons why a person embarks on a risky journey in the hands of criminals and of the risks posed to society by allowing crime to flourish, there remains a lack of incentive to fight smuggling. There also remain significant misunderstandings about both the distinctions and the areas of overlap between the crime of migrant smuggling and that of human trafficking.

28. These factors underscore the need to raise awareness and understanding of the smuggling of migrants as a criminal activity perpetrated through the delivery of smuggling services for the purpose of profit. Such awareness needs to be raised, not only among the actors who must deal with that crime but also among those who are to be deterred from committing smuggling crimes and those who are vulnerable to placing themselves in the hands of smugglers.

B. Lack of data and research (and the gap between research findings and policy development)

29. If the definition and understanding of migrant smuggling differ from country to country, effective research, data collection and cooperation is hampered. Existing criminal justice statistics are not fully reliable for a variety of reasons, including the lack of sufficient national definitions of migrant smuggling and confusion between migrant smuggling and other forms of crime, including trafficking in persons. These challenges are compounded by the fact that most countries focus their data collection efforts on migrants themselves, providing little information on the people who smuggled migrants and the involvement of organized crime.

30. This lack of reliable, systematically collected data makes it difficult to determine the magnitude of migrant smuggling on a national, regional or global scale. Further information is needed on smuggling routes, criminal actors and their methods, the risks smuggled migrants are exposed to, the impact of smuggling of migrants on individuals and communities and the factors that shape the smuggling industry, including its root causes. With respect to the beginning of the smuggling process, there is a lack of knowledge and understanding about the reasons why a person may turn to a migrant smuggler to leave a country, making it difficult to address the root causes of the phenomenon. The fact that existing information on these dimensions of migrant smuggling is scattered and incomplete hampers the formulation of effective policies and operational measures.

31. Further research into the specific national, regional and international dimensions of migrant smuggling is a prerequisite for the elaboration, implementation and

evaluation of strategies to counter migrant smuggling and for developing evidence-based policies. Knowledge and research are also paramount to overcome the current partial understanding of the crime and the violations of human rights it entails.

32. Another challenge with respect to data collection and research is to ensure that the results of such enquiries are used to inform responses to migrant smuggling.⁹ Policy and strategy responses to migrant smuggling must be evidence-based and systematically revised over time in accordance with data and research findings. To achieve this, States need to build their capacity to sustainably collect, store, analyse, report and share information concerning migrant smuggling and related conduct, and translate this information into legislation, national strategies and/or action plans.

C. Lack of legislation

33. At its fourth session, in 2008, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime urged Member States that had not yet done so to consider ratifying or acceding to the Organized Crime Convention and, in particular, the Smuggling of Migrants Protocol (Conference decision 4/5). In the report of the Secretariat on the implementation of the Smuggling of Migrants Protocol, submitted to the Conference at its fourth session, consolidated information and analysis of all replies received from States to the relevant questionnaire submitted to them by the Secretariat shows that while most States reported that their domestic legislation had criminalized migrant smuggling activities, several States were shown to have inadequate capacities to address the issue (CTOC/COP/2005/4/Rev.2). [[www.unodc.org/documents/treaties/COP2008/CTOC%20COP%202005%204%20Rev2%20Final%20E.pdf]]

34. Where lack of comprehensive legislation is due to limited capacity and expertise of legislators to adapt their legislation in accordance with international instruments, targeted training sessions and capacity-building measures are required as a matter of priority. Comprehensive national legislation against migrant smuggling must be put in place to ensure that the political will signified by supporting the Smuggling of Migrants Protocol can be translated into tangible action against migrant smuggling and related crimes.

D. Inadequate policies and planning

35. Only a limited number of Governments have developed specialized policies against migrant smuggling, set up inter-agency cooperation mechanisms, established units to counter migrant smuggling or specifically trained prosecutors and judges. Law enforcement efforts to counter migrant smuggling—where they exist—are often limited to border controls that are not embedded in a wider policy framework.

⁹See for instance, Sergio Carrera and Massimo Merlino, *Undocumented Immigrants and Rights in the EU: Addressing the Gap between Social Science Research and Policy-making in the Stockholm Programme?* (Brussels, Centre for European Policy Studies, December 2009).

36. There is a need for States to elaborate planning and policy documents that enable effective and comprehensive responses to smuggling of migrants through collaborative, multi-agency, long-term, coordinated strategies and well-planned interventions. Planning for action must be based on a sound assessment of both the problem and existing capacities to respond to it, and must be supported by willingness on the part of the various groups and agencies involved to cooperate with one another at the national level and with others at the regional and international levels. Comprehensive strategies need to be operationalized and complement anti-smuggling efforts that are being undertaken on a regional and international basis.

E. Weak criminal justice system response

37. The criminal justice response to smuggling of migrants in most countries is significantly hampered by limited technical resources, equipment, knowledge, expertise and training to properly investigate and prosecute transnational crimes, including migrant smuggling.

38. Combating migrant smuggling requires the professional skills of police, customs officers, immigration and border control officials and coastguard personnel, as well as of forensic experts, prosecutors and judges. In many countries, the overall capability to detect potential migrant smuggling situations is inadequate to effectively combat the smuggling of migrants at the border and to support criminal investigations and prosecutions of the organized criminal groups behind migrant smuggling.

39. Another widespread problem is the lack of understanding of the human rights and protection needs of smuggled migrants encountered by criminal justice practitioners; where smuggled migrants and their rights are inadequately protected, the criminal justice response to the crime is significantly weakened.

F. Inadequate protection and support

40. Providing adequate protection and support to smuggled migrants is both a means to combat migrant smuggling and an end in itself; smuggled migrants can be empowered to participate in the criminal justice system as witnesses to migrant smuggling crimes only where they are adequately supported. In a number of countries, the rights of smuggled migrants are gravely undermined. Authorities in countries of transit or destination often return smuggled migrants to their country of nationality or permanent residence (or even abandon them in a country where they have no status), without due consideration for appropriate return processes and without respect for their human rights or entitlements to protection, including the principle of non-refoulement. In other words, countries of destination and transit should ensure that border control measures are not applied indiscriminately and should identify refugees, asylum-seekers and other groups with specific protection needs and address their needs.

41. Border control, immigration, law enforcement and judicial officials must ensure that smugglers are brought to justice while ensuring the protection of those who have

become victims of crime and/or whose lives and safety have been endangered in the course of being smuggled. In short, it is necessary to fulfil the mandatory protection and assistance provisions of the Smuggling of Migrants Protocol in order both to adhere to the Protocol and to combat the crime of smuggling, in accordance with obligations under international law including human rights and refugee law.

G. Limited international cooperation

42. National efforts to counter the smuggling of migrants are often undermined by the lack of effective bilateral and multilateral mechanisms for the sharing of information and the coordination of operational activities among law enforcement agencies, border control authorities and other relevant actors.

43. National and bilateral responses to migrant smuggling often have the effect of merely displacing smuggling routes to other countries. This, in turn, can lead to an increase in demand for smuggling services to circumvent visa regimes and border controls—often at increased risk to the safety of smuggled migrants.

44. The transnational crime of migrant smuggling requires a transnational response. Research shows that migrant smugglers are highly organized, as either formally structured hierarchical groups or informal networks that come together as the need arises. Member States should take their cue from that cooperative capacity of smugglers and formally work together as a matter of course and informally form cooperative networks to address particular challenges. Given that migrant smuggling and related crime operate across boundaries of all kinds, an effective response requires that geographical, political, ideological and linguistic barriers be overcome to support the common goal of combating migrant smuggling.

VI. Guiding principles in addressing the challenges

45. Several guiding principles have informed the elaboration of the International Framework for Action to Implement the Smuggling of Migrants Protocol. The key interconnected approaches that are deemed essential to comprehensively address migrant smuggling without undermining other international standards and obligations were the guiding principles of human rights and refugee law, non-discrimination and gender- and age-sensitivity, driven by the intention to promote a comprehensive, international and holistic approach, which is interdisciplinary, coordinated, integrated, evidence-based and sustainable. These core underlying approaches are elaborated below.

A. Human rights-based approach

46. Regardless of their immigration status, smuggled migrants have certain inalienable rights arising from international law. These rights are defined in key international treaties, including the International Covenant on Civil and Political

Rights,¹⁰ the International Covenant on Economic, Social and Cultural Rights,¹⁰ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹¹ the Convention on the Elimination of All Forms of Discrimination against Women,¹² the Convention on the Rights of the Child,¹³ the International Convention on the Elimination of All Forms of Racial Discrimination,¹⁴ the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families¹⁵ and customary international law. Additionally, specific provisions relating to the standards of treatment of refugees are provided in the 1951 Convention relating to the Status of Refugees¹⁶ and its 1967 Protocol thereto.¹⁷

47. Although the Smuggling of Migrants Protocol falls within the framework of combating transnational organized crime, by ratifying the Protocol, States parties agree to ensure that human rights and refugee law are not compromised in any way by the implementation of anti-smuggling measures. Indeed, there are several specific provisions in the Smuggling of Migrants Protocol that explicitly refer to the rights of migrants:

- In the preamble to the Smuggling of Migrants Protocol, States parties note that they are “convinced of the need to provide migrants with humane treatment and full protection of their rights”.
- In article 2, the purpose of the Protocol is given: “to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants”.
- Article 4 notes that the Protocol shall apply “to the prevention, investigation and prosecution [of migrant smuggling] ... as well as to the protection of the rights of persons who have been the object of such offences”.
- Article 14, paragraph 1, notes that training should be delivered in preventing migrant smuggling and in “the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.” Article 14, paragraph 2, explicitly notes that cooperation among competent international organizations, non-governmental organizations, other relevant organizations and civil society actors should be undertaken in the delivery of such training, which shall include training on “the humane treatment of migrants and the protection of their rights”.
- Article 16, on protection and assistance measures, contains the following mandatory provision: “In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and

¹⁰General Assembly resolution 2200 A (XXI), annex.

¹¹United Nations, *Treaty Series*, vol. 1465, No. 24841.

¹²*Ibid.*, vol. 1249, No. 20378.

¹³*Ibid.*, vol. 1577, No. 27531.

¹⁴*Ibid.*, vol. 660, No. 9464.

¹⁵*Ibid.*, vol. 2220, No. 39481.

¹⁶*Ibid.*, vol. 189, No. 2545.

¹⁷*Ibid.*, vol. 606, No. 8791.

the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment”.

- Finally, the savings clause of the Protocol, in article 19, paragraph 1, notes the following: “Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein”.

48. In the light of the above-mentioned provisions, a human rights-based approach has been taken in the elaboration of the Framework for Action, often drawing specific guidance from the instruments to which the Smuggling of Migrants Protocol refers.

49. In addition to the need to implement the Smuggling of Migrants Protocol in a way that does not undermine commitments to human rights, the Protocol emphasizes that respecting the human rights of migrants is a means by which migrant smuggling can be prevented and combated. One example of this would be through increasing respect for the rights of potential smuggled migrants in countries of origin so that those individuals would have greater choices for remaining. Protection and assistance of smuggled migrants in transit and destination countries can result in lives saved and can strengthen the criminal justice response to migrant smuggling by gaining investigative intelligence and empowering migrants to stand as witnesses against the people who smuggled and potentially perpetrated crimes against them.

50. A human rights-based approach to addressing migrant smuggling requires that the human rights of perpetrators of migrant smuggling and related crimes are also respected.

B. Non-discriminatory approach

51. The Smuggling of Migrants Protocol stresses that all measures with respect to migrant smuggling must not in any way discriminate against smuggled migrants by virtue of their having been smuggled, in accordance with international human rights standards. This principle is explicitly contained in article 19, paragraph 2, of the Smuggling of Migrants Protocol, which states that the measures set forth in the Protocol “shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of [migrant smuggling].”

52. Article 19, paragraph 2, of the Protocol explicitly recognizes “internationally recognized principles of non-discrimination”, which any domestic law seeking to implement the Protocol must be consistent with. A key international obligation is borne out in article 26 of the International Covenant on Civil and Political Rights, which states:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit

any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

C. Gender- and age-sensitive approach

53. The specific vulnerabilities of men, women and children who fall into the hands of smugglers must be addressed in all responses to migrant smuggling in countries of origin, transit and destination. Gender considerations particularly relating to women have been particularly highlighted by the General Assembly in its resolution 64/139, on violence against women migrant workers, in which the Assembly encouraged Member States to sign or ratify and accede to the Smuggling of Migrants Protocol, as well as all human rights treaties that contribute to the protection of the rights of women migrant workers, and called upon Governments to take several measures in the interests of protecting women from violence.

54. Indeed, the particular needs of migrants on the basis of their gender must be provided for at all stages of responding to migrant smuggling throughout the criminal justice process and in any measures taken in respect of the migrant. A gender-sensitive approach empowers people to assist the criminal justice process, makes protection and assistance measures more effective, and is in accordance with internationally recognized principles.

55. In September 2010, the Office of the United Nations High Commissioner for Human Rights issued a study on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration.¹⁸ The study notes that there are serious gaps in protection for migrant children in all regions of the world and calls on countries of origin, transit and destination to adopt child-sensitive and rights-based approaches, in which the “best interests” of the child are the primary consideration in respect of all measures taken in respect of children. Indeed, all actions undertaken in relation to children should be guided by applicable human rights standards and, in particular, the principles of protection and respect for children’s rights as set out in the Convention on the Rights of the Child. According to the underlying principles of the best interests of the child, children are entitled to special protection measures in accordance with their special rights and needs; in relation to migrant smuggling, this is particularly relevant in ensuring that unaccompanied and separated children are adequately protected and assisted. The Special Rapporteur on the human rights of migrants, in his report to the Human Rights Council, draws particular attention to the plight of migrant children and recommends that “States, especially those of transit and destination, should devote special attention to the protection of undocumented, unaccompanied and separated children, as well as to the protection of children seeking asylum and children victims of transnational organized crime, including ... smuggling.”¹⁹

¹⁸A/HRC/15/29. [[http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.29_en.pdf]]

¹⁹A/HRC/11/7, para. 85.

56. These considerations have informed the elaboration of the International Framework for Action to Implement the Smuggling of Migrants Protocol.

D. Holistic approach

57. A complex, international and multifaceted crime requires a response with a comprehensive, international and holistic approach. At the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, held in Salvador, Brazil, from 12 to 19 April 2010, a number of speakers pointed out that a comprehensive approach balancing criminal justice with human rights is necessary to effectively combat migrant smuggling. Indeed, the three-pronged purpose of the Smuggling of Migrants Protocol (prevention, protection and cooperation) reflects the spirit of this comprehensive, international and holistic response.

58. The Global Commission on International Migration made several recommendations in respect of the related issue of irregular migration, including ensuring that border control policies form part of a long-term approach addressing the socio-economic, governance and human rights deficits that prompt people to leave their own country. Such an approach should be based on inter-State dialogue and cooperation.²⁰

59. The Berne Initiative, launched by Switzerland in June 2001, facilitated the exchange of policy priorities and interests in migration issues. One of the key outcomes of the Berne Initiative was the International Agenda for Migration Management, developed to serve as a common reference document for comprehensive migration policy strategy. It has been drawn upon in developing the International Framework for Action to implement the Smuggling of Migrants Protocol.²¹ The key principles underlying the International Agenda for Migration Management are adaptable to addressing migrant smuggling, namely, that comprehensive approaches are required at national, regional and global levels, that the prime responsibility for managing migration lies with States and that dialogue and partnership between States enrich existing unilateral, bilateral and regional approaches.²²

60. Further, the International Agenda for Migration Management resulting from the Berne Initiative stressed that the implementation of comprehensive and coherent national policies is key to effective international policies and cooperation and notes that support for capacity-building in States lacking adequate resources, structures or expertise can make useful contributions in that regard.²³ The International Agenda for Migration Management also stresses that bilateral, regional and global instruments provide a solid foundation for the development of comprehensive approaches.²⁴ In addition, the Agenda notes that a holistic approach is one that takes into consideration and balances economic, social, political, humanitarian,

²⁰Global Commission on International Migration, *Migration in an Interconnected World: New Directions for Action—Report of the Global Commission on International Migration* (2005), p. 80.

²¹Switzerland, Federal Office for Migration, and International Organization for Migration, Berne Initiative, *International Agenda for Migration Management: Common Understandings and Effective Practices for a Planned, Balanced, and Comprehensive Approach to the Management of Migration* (2005).

²²*Ibid.*, p. 9.

²³*Ibid.*, p. 23.

²⁴*Ibid.*

developmental, health and environmental factors, taking into account the root causes of migration.²⁵

61. In keeping with the interrelated considerations of ensuring that implementation of the Smuggling of Migrants Protocol does not jeopardize protection and assistance of refugees and asylum-seekers, the Refugee protection and mixed migration: a 10-point plan of action of the Office of the United Nations High Commissioner for Refugees (UNHCR) was drawn upon in the spirit of interrelated efforts to address interrelated issues. Indeed, this approach exemplifies the comprehensive, international and holistic approach required to respond to the challenge of migrant smuggling in its call for the following:

1. Cooperation among key partners
2. Data collection and analysis
3. Protection-sensitive entry systems
4. Reception arrangements
5. Mechanisms for profiling and referral
6. Differentiated processes and procedures
7. Solutions for refugees
8. Addressing secondary movements
9. Return arrangements for non-refugees and alternative migration options
10. Information strategy²⁶

62. More recently, the United Nations Development Programme in its *Human Development Report 2009: Overcoming Barriers—Human Mobility and Development*²⁷ stressed the necessity of a holistic approach to migration issues in noting that “conventional approaches to migration tend to suffer from compartmentalization ... Categories originally designed to establish legal distinctions for the purpose of governing entry and treatment can end up playing a dominant role in conceptual and policy thinking. Over the past decade, scholars and policymakers have begun to question these distinctions, and there is growing recognition that their proliferation obscures rather than illuminates the processes underlying the decision to move, with potentially harmful effects on policy-making.”²⁸ In its recent report on irregular migration, migrant smuggling and human rights, the International Council for Human Rights Policy stresses the need for a holistic approach when it states that “the evidence suggests that, taken in isolation, policies that narrowly attempt to exclude migrants from reaching and crossing borders will fail, at high cost to human life”.²⁹

63. The above conclusions and recommendations have been drawn upon and adapted to the challenge of migrant smuggling in the elaboration of the International Framework for Action to Implement the Smuggling of Migrants Protocol.

²⁵Ibid., p. 24.

²⁶Office of the United Nations High Commissioner for Refugees, “Refugee protection and mixed migration: a 10-point plan of action”, available from www.unhcr.org/4742a30b4.pdf.

²⁷United Nations Development Programme, *Human Development Report 2009: Overcoming Barriers—Human Mobility and Development*. United Nations publication, Sales No. E.09.III.B.1.

²⁸Ibid., p. 12.

²⁹International Council on Human Rights Policy, *Irregular Migration, Migrant Smuggling and Human Rights: Towards Coherence* (Geneva, 2010), p. 91.

E. Coordinated approach

64. At the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, several representatives emphasized the need to strengthen the coordination of efforts within States, as well as at the regional and international levels, and with all relevant stakeholders, noting the specific role of non-governmental organizations.

65. An integrated approach to migrant smuggling is one that does not consider the issue in isolation but integrates responses to it with responses to other relevant issues, including migration generally, crime, health, gender and other issues, in a way that acknowledges that migrant smuggling is a multi-dimensional issue. Indeed, the objectives of the Smuggling of Migrants Protocol span not only combating and preventing migrant smuggling, but also protecting smuggled migrants and their rights, and cooperating to these ends. Effectively meeting this challenge requires a range of actors from a range of sectors.

66. Member States must ensure coordination among the various policymakers concerned, and among governmental agencies involved in anti-smuggling activities, as well as relevant international organizations, non-governmental organizations and civil society actors. Such coordination must transcend borders and occur throughout origin, transit and destination countries.

67. The Global Commission on International Migration was established in December 2003, mandated to provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration, and present its recommendations to the Secretary-General, Governments and other stakeholders. In relation to migrant smuggling, the Commission recommended that States must strengthen their efforts to combat the criminal phenomena of migrant smuggling and prosecute perpetrators.³⁰ The Commission also stressed the intricacy of migrant smuggling as a phenomenon that may converge with human trafficking and that the degree of exploitation a migrant experiences may change in the course of their journey. The Commission also acknowledges that some smuggled migrants may seek asylum and qualify for refugee status.³¹

68. The International Agenda for Migration Management stresses that compliance with applicable principles of international human rights, refugee, humanitarian, migrant workers and transnational organized crime laws is an integral component of all migration management systems at the national, regional and international levels.³² Further, cooperation and dialogue among interested stakeholders including Governments, international organizations, non-governmental organizations, civil society, including migrant associations, employer and worker organizations and the media, are important elements for effective partnerships and comprehensive and balanced policies.³³ Measures taken to address the transnational crime of migrant smuggling should be coordinated so as to avoid unnecessary overlap and resource wastage.

³⁰*Migration in an Interconnected World*, p. 39.

³¹*Ibid.*

³²*International Agenda for Migration Management*, pp. 23-24.

³³*Ibid.*, p. 24.

69. The Global Migration Group was established in response to a recommendation to the Global Commission on International Migration for the establishment of a high-level inter-institutional group of agencies involved in migration-related activities. The Global Migration Group is an inter-agency group bringing together heads of agencies to promote wider application of all relevant and regional instruments and norms related to migration and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to the issue of migration.

70. In addition to promoting inter-agency cooperation in international migration, the Global Migration Group also contributes to the Global Forum on Migration and Development, an intergovernmental process that emerged after the General Assembly's High-level Dialogue on International Migration and Development, held in New York on 14 and 15 September 2006. The fourth meeting of the Global Forum on Migration and Development, held in Puerto Vallarta, Mexico, from 8 to 11 November 2010, addressed partnerships for migration and human development, focusing on shared prosperity and shared responsibility.

F. Evidence-based approach

71. Policies and measures offered to prevent and combat migrant smuggling must be based on evidence. Effective data collection and research should underpin all responses, which, in turn, should be constantly evaluated and revised based on changed circumstances and measurements of effectiveness.

72. UNODC and other relevant entities have repeatedly stressed the need to carry out further research into migrant smuggling so as to strengthen response to it.³⁴ Data collection, analysis and exchange is important at the national, regional and international levels. Such data should be collected not only about the modus operandi of migrant smuggling but also on vulnerabilities of individuals to migrant smuggling so as to better understand causes and consequences of migrant smuggling.

73. In this context, it has been noted that it is not enough simply to undertake social science research; such research must be effectively used as a basis for policy-making. Closing the gap between research and policymaking is essential to ensure that responses to migrant smuggling are drawn from evidence and are therefore effective and adaptable to changing realities.³⁵

G. Sustainable approach

74. Sustainability refers to coherence of practices in terms of both time and efficiency. A sustainable response to migrant smuggling is one that goes beyond the law enforcement dimensions of the issue, evolves over time and adapts to changed circumstances. Where legislation is simply put in place or policies simply drafted without appropriate resources and expertise being committed to their

³⁴See United Nations Office on Drugs and Crime, Issue Paper: *Organized Crime Involvement in Trafficking in Persons and Smuggling of Migrants* (2010), pp. 71-74; and *International Agenda for Migration Management*, p. 25

³⁵Carrera and Merlino, *Undocumented Immigrants and Rights in the EU*, p. 33.

implementation, the response is not sustainable. Similarly, where the people who are impacted by policies are not involved in the process of making them, the results can be ineffective and unsustainable.

75. On a practical level, this means that a comprehensive policy against the smuggling of migrants would not be designed to require substantial financial support beyond its initial implementation. Once implemented, sustainability of the activities can be ensured by catalyzing lasting change at the level of institutions, legislation, policies and improved capacities of relevant authorities.

76. The main goal of activities undertaken should not be to make an isolated contribution to the prevention of migrant smuggling but to build and strengthen sustainable structures in the law enforcement and criminal justice systems that will enable the institutions more effectively to prevent, investigate and punish this crime in the medium- to long-term future.

77. Sustainability also requires that risks be weighed against benefits in formulating approaches to migrant smuggling and that contingency plans be envisaged to treat some of the risks. Risks can affect individuals, communities, States and the relationships between them. The political risk is common to any such comprehensive activities that require cooperation at all levels. Another risk that may be considered is that approaches to prevent and combat smuggling of migrants may not generate the required dedication by the national authorities concerned, given the number of competing priorities. This underlines the need to formulate policies at the central level with broad and meaningful participation of relevant actors in both the design and implementation of approaches. Another risk to the sustainability of the migrant smuggling response is posed by frequent turnover of relevant officials, weakening continuity and communication at an institutional level. Contingency plans to minimize such risks could include efforts to ensure that all relevant entities and individuals are informed of migrant smuggling strategies and their institutional obligations in respect of them, as well as putting in place sustainable and ongoing communication channels between relevant agencies by building on existing communication structures and initiatives at the national level.

78. The Framework for Action is based on the assumption that the authorities are fully committed to the implementation of the Smuggling of Migrants Protocol. It is also assumed that the national authorities will allow relevant staff to actively participate and contribute as required in activities and that Government officials are receptive and committed to adopting recommendations provided by experts.

79. Finally, sustainability can be achieved only through monitoring and evaluating the effectiveness of responses over time to ensure the continued adaptation of responses to changing situations and challenges. Measuring progress in the absence of strong data (as discussed above) is challenging, but notwithstanding this, several steps can be taken to gauge improvement of response to migrant smuggling. For instance, improvement would be manifest in increased assistance and support for smuggled migrants and their increased willingness to be involved in the criminal justice system, which would ideally translate into prosecution and conviction of migrant smugglers. In addition to implementing mechanisms to review the response to migrant smuggling or expanding the role of existing mechanisms to do so, progress

can also be monitored through close cooperation with other agencies with responsibility for day-to-day operational matters and regular consultation with relevant international organizations, non-governmental organizations, civil society actors and other sections of the community.

VII. Overview of the Framework for Action

How to use the Framework for Action

80. The Framework for Action “unpacks” the Smuggling of Migrants Protocol in order to guide implementation by Member States and thus ensure an effective and comprehensive response to migrant smuggling at the national, regional and international levels. The Framework for Action has four pillars; prosecution, protection, prevention and cooperation. Each of the four pillars is divided into the following sections: protocol objectives, specific objectives, framework requirements, implementation measures and operational indicators.



- Protocol objectives reflect the provisions of the Smuggling of Migrants Protocol.
- Specific objectives explain the intent of the provisions.
- Framework requirements set out minimum standards for action.
- Implementation measures offer best practices to achieve effective implementation.
- Operational indicators measure implementation and help monitor change over time.

81. In addition to the tables and the narrative of the Framework for Action are two annexes:

- The resource annex provides additional resources that users can refer to in further developing their work to prosecute and prevent migrant smuggling, protect smuggled migrants and cooperate to these ends.
- The protocol annex contains the text of the Smuggling of Migrants Protocol and cross references to the relevant sections of the Framework for Action, which suggest measures for implementing specific provisions.

82. The Framework for Action focuses on the four interrelated pillars of intervention needed to ensure an effective and comprehensive response to migrant smuggling: prosecution and investigation; protection and assistance; prevention; and cooperation.

A. Table 1 of the Framework for Action: prosecution (and investigation)

83. Migrant smuggling remains a crime that often goes unprosecuted. Legislative measures are often aimed at migrants or irregular migration rather than at the smugglers, meaning that legislative frameworks are often inadequate to address the criminal elements behind the phenomenon. The Smuggling of Migrants Protocol, read in conjunction with the Organized Crime Convention, sets out legislative measures that can be taken to strengthen the response to migrant smuggling and to target the organized criminal networks behind the phenomenon, rather than only low-level actors.

1. Criminalization of migrant smuggling and related conduct

84. The Conference of the Parties to the United Nations Convention against Transnational Organized Crime has urged Member States to consider ratifying or acceding to the Organized Crime Convention and, in particular, the Smuggling of Migrants Protocol. However, commitment to the Smuggling of Migrants Protocol alone does not challenge migrant smuggling unless it results in meaningful implementation of the provisions therein. Member States must enact new legislation or amend existing legislation in order to prevent smuggling of migrants from occurring, punish offenders and protect the rights of smuggled migrants.

85. A key benefit of criminalization of migrant smuggling in accordance with the Smuggling of Migrants Protocol is the resulting harmonization of definitions of the crime and strengthened coordination in response to it across borders. This section of the International Framework for Action breaks down the elements that need to be criminalized in national law in order to domestically implement the criminalization provisions provided for in the Organized Crime Convention and the Smuggling of Migrants Protocol.

86. The non-criminalization of smuggled migrants is also discussed. In accordance with article 5 of the Protocol, a person cannot be charged with the crime of smuggling for having being smuggled. This does not mean that they cannot be prosecuted for smuggling other people or for the commission of any other offences. In relation to a smuggled migrant's commission of other offences, States must be aware of the various scenarios that may arise during the smuggling journey. If for instance, a smuggled migrant is carrying drugs, it may be because he or she has been coerced into doing so. In the light of such situations where a smuggled migrant is found to have engaged in the commission of crime related to the smuggling process, all the facts must be assessed, giving due consideration to the possibility of coercion and the state and extent of the knowledge of the smugglers and the extent of their involvement.

87. It is also clear that the intention of the Protocol is not to criminalize activities of family members or other support groups such as religious or non-governmental organizations.³⁶ The reference in the definition of migrant smuggling as being for the purpose of “financial or other material benefit” is intended to emphasize that the intention is to include the activities of organized criminal groups acting for profit but to exclude the activities of those who support migrants for humanitarian or familial reasons.

88. The non-criminalization provision also intends to ensure that refugees who rely on smugglers to flee persecution, serious human rights violations or conflict are not penalized, nor their access to protection jeopardized. This principle is contained in article 31, paragraph 1, of the 1951 Convention relating to the Status of Refugees, which states that:

The contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

89. Smugglers who deliberately abuse or misuse asylum processes are in no way protected by this provision. Rather, their actions would likely fall within the scope of the Smuggling of Migrants Protocol.

2. Other necessary legislative measures

90. The section on other necessary legislative measures for prosecution and investigations of the International Framework for Action discusses the need to ensure that legal persons can be held liable for migrant smuggling, the need to establish jurisdiction to investigate, prosecute and punish migrant smuggling offences and measures to encourage persons involved in the commission of migrant smuggling and related crimes to cooperate with the criminal justice process.

91. Article 10 of the Organized Crime Convention requires that all States parties adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for offences established under the Smuggling of Migrants Protocol. Article 15 of the Convention requires that States establish jurisdiction over those Protocol offences that occur within their “territory”. This requirement reflects the territorial principle of jurisdiction, by which States are permitted to assert jurisdiction over prohibited conduct that takes place, wholly or substantially, within the territory of the State, on ships flying the flag of the State and on aircraft registered in that State. The term “territory” should include territorial sea, consistent with article 2 of the United Nations Convention on the Law on the Sea.³⁷ Such measures are intended to ensure, for instance, that migrant

³⁶Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1, paras. 88-90), reproduced in the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), p. 469.

³⁷United Nations, *Treaty Series*, vol. 1833, No. 31363.

smugglers who attempt to smuggle persons by sea into another State can be successfully prosecuted.³⁸

92. Article 26 of the Organized Crime Convention calls States to put in place measures to encourage those who have participated in migrant smuggling to cooperate with law enforcement authorities. Such measures include considering mitigation of punishment for persons who provide substantial cooperation in the investigation or prosecution of a migrant smuggling offence, as well as considering granting immunity from prosecution.

3. Criminalization of Organized Crime Convention offences

93. The Organized Crime Convention contains several crimes that must be criminalized in domestic legislation in order to achieve a strong criminal justice response to the crime of smuggling. These additional crimes include participation in an organized criminal group (Organized Crime Convention, art. 5), money-laundering (arts. 6 and 7), corruption (art. 8) and obstruction of justice (art. 23). Legislative and other measures as may be necessary to establish these acts as criminal activities must be taken.

94. In relation to the criminalization of participation in an organized criminal group, it is clear that harmonization of understandings of this offence is necessary to address crimes that take place across borders. Article 5 of the Organized Crime Convention sets out to achieve this, and offers two main approaches to criminalization that can be adopted by all States parties.

95. Money-laundering, technically understood as the concealment or disguise of the illegal origin of the proceeds of crime, is dealt with in articles 6 and 7 of the Convention, which aim to set out minimum standards to enable States parties to cooperate. Where left unchecked, money-laundering can have manifest negative impacts on the countries in which it occurs, promoting corruption and compromising the integrity of governance systems. Laundered illegal proceeds can then be used to fuel the commission of further crimes. In the context of migrant smuggling, it is therefore essential that the legislation in place criminalizing money-laundering include migrant smuggling as a predicate offence for money-laundering and that measures be put in place to combat money-laundering resulting from or for the purpose of migrant smuggling.

96. Corruption is both a means of committing the crime of migrant smuggling and an end as smugglers establish their smuggling routes along those paths where corruption is easiest. Under article 8 of the Organized Crime Convention, States parties are required to address both active bribery (promising, offering or giving undue advantage to a public official to act or refrain from acting) and passive bribery (acceptance by a public official of undue advantage in order to act or refrain from acting) as well as participation as an accomplice in either of the above. In addition, article 9 of the Organized Crime Convention requires that States parties adopt

³⁸For more information, see the *Model Law against the Smuggling of Migrants*, which contains extensive commentary on the rights of coastal States to action within their territorial sea against foreign vessels engaged in smuggling of migrants.

legislative or other measures, as appropriate and consistent with their legal system, to promote integrity; prevent, detect and punish corruption of public officials; and ensure effective action by officials. These measures require that anti-corruption authorities have sufficient independence to prevent undue influence.

97. The obstruction of justice, which undermines efforts to prosecute and convict migrant smugglers, should be criminalized in order to uphold the integrity of the criminal justice apparatus. Article 23 of the Convention requires that use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage be criminalized in two circumstances: when it is used to induce false testimony or to interfere in the giving of testimony or the production of evidence in proceedings in relation to offences covered by the Convention (art. 23, subpara. (a)); or when used to interfere with official duties by a justice or law enforcement official in relation to offences covered by the Convention (art. 23, subpara. (b)).

4. Investigation

98. Effective and intelligence-led investigative techniques should be developed and strengthened to ensure implementation of judicial procedures that take into consideration the needs of smuggled migrants, especially those who have fallen victim to crime.

99. At the outset, national legislation should be put in place to allow for the confiscation of assets or other proceeds that have been obtained through migrant smuggling crimes; such confiscation can have the effect of hampering further crimes from being committed and have a punitive affect on smugglers.³⁹ Further, special investigative techniques as provided for in article 20 of the Organized Crime Convention should be applied to migrant smuggling investigations. This may require reviewing, enacting or amending legislation both to allow the use of special investigative techniques and to control its use in accordance with human rights standards. Other measures that may be necessary to practically promote the use of special investigative techniques may include the provision of appropriate human, technical and other resources, as well as the building of investigative capacity.⁴⁰

5. Sanction

100. States are required by article 11, paragraph 1, of the Organized Crime Convention to strengthen or introduce legislation to give effect to the Smuggling of Migrants Protocol, including through adopting sanctions against those who engage in migrant smuggling for profit.⁴¹

101. In order to effectively combat migrant smuggling and deter smugglers from committing their crimes, the penalties and sanctions imposed must be appropriate

³⁹*International Agenda for Migration Management*, p. 44.

⁴⁰For more information on Special Investigative Techniques, see *Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants* (United Nations publication, Sales No. E.10.IV.7). Module 3 addresses investigative approaches, module 4 addresses financial investigations and module 5 addresses covert (or special) investigative techniques. Available from [<http://www.unodc.org/unodc/en/human-trafficking/electronic-basic-training-manual-on-investigating-and-prosecuting-smuggling-of-migrants.html>]

⁴¹*International Agenda for Migration Management*, p. 44.

and proportionate to the gravity of the crime. This applies to both natural and legal persons. The severity of sanctions is left to the discretion of States parties, but in order for the Convention to apply, offences must be punishable by four years or more.⁴²

102. It is also recommended that the sanctions imposed on migrant smugglers be publicized so as to deter other potential criminals from also engaging in migrant smuggling.⁴³

103. Article 6, subparagraphs 3 (a) and (b), of the Protocol require that aggravating circumstances be established, that is, circumstances that endanger, or are likely to endanger, the lives or safety of the migrants concerned and circumstances that entail inhuman or degrading treatment, including for exploitation, of such migrants. States are encouraged to enhance their legislation by including aggravating circumstances that go beyond those that are set out in the Protocol.

B. Table 2 of the Framework for Action: protection (and assistance)

104. The circumstances that lead people into the hands of smugglers and the situations they find themselves in by virtue of being smuggled are often not understood. The result can be that smuggled migrants are inadequately protected and assisted, compromising both the rights of smuggled migrants and the prospects of the successful investigation and prosecution of smugglers.

105. Among smuggled migrants, there may be asylum-seekers, refugees and victims of crime, including human trafficking. Such people must be accurately identified in order to effectively and appropriately protect and assist them according to their specific needs. Such identification requires that necessary legislative measures be adopted or amended, that identification processes be strengthened, that legislation be implemented and enforced and that referral systems and other necessary mechanisms be put in place to ensure that persons identified as needing special protection and assistance can receive it. Necessary to these efforts is the application of international standards—including those set out in international humanitarian, refugee and human rights law—that take into account special needs owing to age, gender and other factors.

1. Protection and assistance of smuggled migrants

106. Effective protection and assistance mechanisms for intercepted smuggled migrants need to be established. Such mechanisms need to ensure a balance between protecting smuggled migrants while meeting the requirements of criminal investigation and prosecution of migrant smugglers and upholding the integrity of state borders.

⁴²*Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.05.V.2), p. 133.

⁴³See Office of the United Nations High Commissioner for Refugees, *Agenda for Protection*, 3rd. ed. (Geneva, October 2003).

107. The Smuggling of Migrants Protocol contains mandatory protection provisions. Article 2 notes that protection is one of the key purposes of the Protocol, article 4 sets out the scope of the Protocol, which entails protection, and article 16 explicitly outlines mandatory protection and assistance measures. Article 16 lays down specific obligations for States parties to take all appropriate measures with a view to, among other things:

- (a) Protecting the internationally recognized rights of smuggled immigrants, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (art. 16, para. 1);
- (b) Affording migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups (art. 16, para. 2);
- (c) Offering assistance to those whose life or safety is endangered by reason of having been smuggled (art. 16, para. 3).⁴⁴

108. It is also important to note that article 16, paragraph 4, of the Protocol underlines the need to cater for the special needs of women and children in protection and assistance measures. Such considerations should be mainstreamed throughout protection measures put in place in respect of smuggled migrants.

2. Non-discrimination of smuggled migrants

109. In article 19, paragraph 2, the Smuggling of Migrants Protocol explicitly prohibits any measures taken to implement the Protocol from being discriminatory to smuggled migrants. It is therefore mandatory that international human rights principles concerning non-discrimination are observed, including those enshrined in articles 2, paragraph 1, and 26 of the International Covenant on Civil and Political Rights. General comment No. 15 (1986) adopted by the Human Rights Committee notes that the application of the rights contained in the International Covenant on Civil and Political Rights should not be applied with any discrimination between citizens and non-citizens.

110. The principle of non-discrimination is also contained in article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights, article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, article 7 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and article 2, paragraph 1, of the Convention on the Rights of the Child, which states that States parties shall take all measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status of the child's parents, legal guardians or family members. At the regional level, the principle of non-discrimination finds expression in article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,⁴⁵ which states that "the enjoyment of the rights and

⁴⁴United Nations Office on Drugs and Crime, *Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime* (New York, 2008), p. 24.

⁴⁵Council of Europe, *European Treaty Series*, No. 5.

freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status". Similarly, the Inter-American Court of Human Rights issued an advisory opinion at the request of Mexico on the legal status and rights of undocumented migrants (advisory opinion OC-18/03 of 17 September 2003 on the Juridical Condition and Rights of Undocumented Migrants, issued by the Inter-American Court of Human Rights). In its opinion, the Court stated that the fundamental principle of equality and non-discrimination is of a peremptory nature and binds all States regardless of any circumstance or consideration such as the migratory status of a person.

111. The principle of non-discrimination does not prohibit all distinctions between nationals and non-nationals. International human rights law is based on the premise that all persons should enjoy human rights without distinction, unless exceptional distinctions serve a legitimate State objective and are proportional to the achievement of that objective. In other words, "differential treatment is permissible where the distinction is made pursuant to a legitimate aim, the distinction has an objective justification, and reasonable proportionality exists between the means employed and the aims sought to be realized".⁴⁶ Such a distinction can be made between citizens and non-citizens, including smuggled migrants, where a distinction is made according to these criteria.⁴⁷ The Committee on the Elimination of Racial Discrimination, in its general recommendation No. XXX, on discrimination against non-citizens in 2004, states that under the International Convention on the Elimination of All Forms of Racial Discrimination between citizens and non-citizens will constitute discrimination if the criteria for such differentiation are not applied pursuant to a legitimate aim and are not proportional to the achievement of this aim. The practical result of such differential treatment in this context means that any distinctions are to be reasonable in serving legitimate aims pursuant to measures proportionately linked to migration status.

112. Therefore it can be seen that implementation of applicable international instruments that promote respect for the principle of non-discrimination and their incorporation into national legislation and practice is an important component of policies concerning migrant smuggling.⁴⁸ In short, any approach to combating discrimination against smuggled migrants should take into account (a) the interest of the State in specific rights; (b) the relationship between the smuggled migrant and the relevant State; and (c) whether the State's interest or reason for distinguishing between citizens and smuggled migrants is legitimate and proportionate.⁴⁹

3. Right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment

113. Every human being has a fundamental right to life (art. 6, para. 1, of the International Covenant on Civil and Political Rights) and a right not to be subjected

⁴⁶J. Fitzpatrick, "The human rights of migrants", in *Migration and International Legal Norms*, T. A. Aleinikoff and V. Chetail, eds. (The Hague, T.M.C. Asser Press, 2003), p. 172.

⁴⁷Office of the United Nations High Commissioner for Human Rights, *The Rights of Non-Citizens* (United Nations publication, Sales No. E.07.XIV.2), p. 7.

⁴⁸*International Agenda for Migration Management*.

⁴⁹*The Rights of Non-Citizens*, p. 7.

to torture or other cruel, inhuman or degrading treatment or punishment (art. 7, of the International Covenant on Civil and Political Rights). These rights are fundamental in international human rights law, and are explicitly provided for in article 16, paragraph 1, of the Smuggling of Migrants Protocol. Implementing article 16, paragraph 1, involves not only intervening in situations where lives of smuggled migrants are under threat but also proactively protecting and assisting smuggled migrants to ensure their positive enjoyment of these rights. Further, upholding the right to life requires that State actors refrain from actions that could lead to violation of smuggled migrants' right to life and/or not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

114. An example of intervening to protect the right to life, for instance, would include rescuing smuggled migrants from smuggling situations that endanger their lives or safety. An example of proactively offering protection and assistance to uphold the rights in question would include, for example, the provision of food and medical care to smuggled migrants who have been intercepted. Finally, an example of refraining from acts that would jeopardize the enjoyment of these rights would include not returning persons to situations where there is a chance that their lives or safety would be under threat or that they would be subject to torture, cruel, inhuman or degrading treatment or punishment.

4. Protection against violence

115. Article 16, paragraph 2, of the Smuggling of Migrants Protocol requires that Member States “shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them by migrant smugglers”. The Protocol does not provide guidance on what is meant by “appropriate measures” of protection, leaving the interpretation of this provision to States parties. Good practice suggests that what are appropriate measures are determined through consideration of the types of violence likely to be inflicted on smuggled migrants, the situations where violence may arise, the communities and individuals that may be affected, the special needs of particular smuggled migrants and the resources that are available to respond to these issues.

116. Some States may have dedicated crime prevention programmes in place. The potential for victimization of smuggled migrants should be considered in developing such programmes. Other States provide support programmes to their nationals overseas through their embassies in major destination countries. In other instances, protection will need to include measures to ensure that migrants have access to physical protection through law enforcement. Depending on the nature of the protection offered, positive steps may need to be taken in order to remove practical barriers to accessing such protection.

117. Measures to protect smuggled migrants against violence are particularly pertinent in respect of smuggled migrants who are women, as stressed in article 16, paragraph 4, of the Smuggling of Migrants Protocol. The special vulnerability of smuggled migrant women to violence must be borne in mind in the design, implementation and review of any measures put in place to protect against violence,

starting by addressing the underlying discriminatory norms and behaviour that contribute to the heightened vulnerability of women to violence, both before being smuggled, during the smuggling process and afterwards in the country of destination, when the smuggled migrant is living in the community as an irregular migrant or is in the custody of the destination State and/or is returned to her State of origin.

5. Assistance to migrants whose lives or safety are endangered

118. Related to the right to life is the provision of assistance to smuggled migrants whose lives or safety are endangered. Article 16, paragraph 3, of the Smuggling of Migrants Protocol requires that basic assistance be provided to smuggled migrants whose lives or safety are endangered by virtue of having been the object of smuggling. Such assistance includes ensuring medical and health assistance to smuggled migrants. Article 16, paragraph 3, does not create a new right but it “does establish a new obligation in that it requires States parties to provide basic assistance to migrants and illegal residents in cases where their lives or safety have been endangered by reason of an offence established in accordance with the Protocol”.⁵⁰ Depending on the circumstances of any given situation, key considerations may need to involve the provision of physical security (for example, by law enforcement personnel); access to emergency food, shelter and medical care; access to consular services; and legal advice.

119. While the right of all persons, irrespective of migration status, to access emergency medical care is not clearly defined, it can be extrapolated from the right to life expressed in article 6 of the International Covenant on Civil and Political Rights and the right to health in article 12 of the International Covenant on Economic, Social and Cultural Rights. As the Human Rights Committee has observed, it is incumbent on States parties to the International Covenant on Civil and Political Rights to ensure that the right is not interpreted narrowly, as protection of the right to life will frequently require positive action on the part of States parties. Following that reasoning, part of giving practical application to this right is ensuring that whenever a person (including a smuggled migrant) is in need of emergency medical care, they should be provided with such care, irrespective of considerations such as their immigration status. A denial or refusal of emergency medical care where such refusal would have life-threatening consequences is clearly a violation of the right to life. This right has particular resonance in the context of smuggling of migrants, as smuggled migrants may be intercepted by authorities after they have been locked in shipping containers without adequate air or food, or after they have undertaken long, dangerous journeys, for instance. The right to receive any medical care that is urgently required for the preservation of life or the avoidance of irreparable harm to health is to be provided on an equal basis with nationals of the State concerned, as laid out in article 28 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and other human rights instruments including article 25 of the International Convention on the Elimination of All Forms of Racial Discrimination; article 12, paragraph 1, of

⁵⁰*Legislative Guides*, p. 365

the International Covenant on Economic, Social and Cultural Rights; article 24, paragraph 1, and articles 25 and 29 of the Convention on the Rights of the Child; and article 14 of the Convention on the Elimination of All Forms of Discrimination against Women.

120. The human right to health is guaranteed in article 12, paragraph 1, of the United International Covenant on Economic, Social and Cultural Rights, in which States parties recognize “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. The Committee on Economic, Social and Cultural Rights clarifies in its General Comment No. 14 (2000), on the right to the highest attainable standard of health, that “States are under the obligation to respect the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, asylum-seekers and illegal immigrants, to preventative, curative and palliative health services; abstaining from enforcing discriminatory practices as a State policy” (para. 34).⁵¹ This right is flagged in the International Framework for Action in the context of providing assistance in accordance with international standards.

121. The human right to food is protected by article 11 of the International Covenant on Economic, Social and Cultural Rights. General Comment No. 12 (1999) on the right to adequate food, of the Committee on Economic, Social and Cultural Rights offers guidance on the practical fulfilment of this right. Provision of adequate food implies that “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture” (para. 8).⁵² Such dietary needs could vary according to whether the person concerned is, for instance, a child, pregnant or lactating woman, older person or person with illness.

6. Compliance with international obligations in situations of detention

122. This section of the International Framework for Action addresses three key considerations in complying with international obligations in situations of detention: detention as a last resort, detention standards and special considerations in respect of vulnerable individuals.

123. *Prima facie*, there is a presumption against detention such that non-custodial alternatives should be explored in the first instance. Detention cannot be arbitrary but must be in accordance with procedures established by law. Detained persons must also be informed of the reason for and duration of their detention and be able to challenge decisions to detain them.

124. Where detention occurs, it must be only in accordance with international standards. According to the Smuggling of Migrants Protocol, detention of smuggled migrants must not affect other rights, obligations and responsibilities of States and individuals under international law.⁵³ All individuals who are deprived of their liberty

⁵¹See *Official Records of the Economic and Social Council, 2001, Supplement No. 2 (E/2001/22)*, annex IV; available from www.unhcr.org/refworld/docid/4538838d0.html.

⁵²See *Official Records of the Economic and Social Council, 2000, Supplement No. 2 and corrigendum (E/2000/22 and Corr.1)*, annex V; available from www.unhcr.org/refworld/docid/4538838c11.html.

⁵³Article 19, paragraph 1, of the Smuggling of Migrants Protocol.

are therefore entitled to a number of basic legal and procedural guarantees, including those set out in article 9 of the International Covenant on Civil and Political Rights. There are several international guidelines on detention standards, which are provided in the resource annex.

125. Mandatory article 16, paragraph 5, of the Smuggling of Migrants Protocol sets out that where a smuggled migrant is detained, State parties shall comply with their obligations under the Vienna Convention on Consular Relations,⁵⁴ where applicable, including that of informing the person concerned without delay about their right to communicate with consular officials. Article 36 of the Vienna Convention on Consular Relations governs consular communication and contact with nationals who are detained.

126. Attention must also be paid to ensure that all detention decisions are made with consideration for the special needs of women and children. As a general rule, children should not be detained. Where detention is exceptionally justified (for example, for identification purposes), it shall be used only as a measure of last resort, for the shortest possible period of time and in an environment or setting that is appropriate for children. These principles are contained in article 37 of the Convention on the Rights of the Child.⁵⁵ Articles 31 and 29 of the Convention on the Rights of the Child also set out special arrangements that must be made for living quarters that are suitable for children and that separate them from adults, unless it is considered to be in the child's best interests not to do so. Smuggled migrants who are children and are temporarily deprived of their liberty should be provided with all basic necessities, as well as appropriate medical treatment and psychological counselling, where necessary, and education. This should take place ideally outside the detention premises in order to facilitate the continuance of their education upon release. Children also have a right to recreation and play.⁵⁶ The underlying approach in all situations concerning children should be "care" and not "detention".

127. In accordance with the rights of children and their families, children are not to be separated from their families unless it is determined to be in their best interest. Where detention results in separation, parents should have the ability to make decisions regarding their children, and should have access to their children,

⁵⁴United Nations, *Treaty Series*, vol. 596, No. 8638.

⁵⁵Article 37 of the Convention on the Rights of the Child states: States parties shall ensure that: (a) no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age; (b) no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; (c) every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

⁵⁶Under article 31 of the Convention on the Rights of the Child:

"1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts."

"2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity."

Article 29 also states that education should be directed to a broad range of developmental areas, including the child's personality, talents and mental and physical abilities.

including access to court and custody cases for parents who are detained. All of these considerations need to be balanced through best interest determinations that take into consideration that family unity is generally in the best interests of the child.⁵⁷

128. In its detention standards brief, the International Detention Coalition sets out standards on the detention of refugees, asylum-seekers and migrants based on identified international law, standards and guidelines. The standards contained in that brief neatly cover the above considerations:

1. The detention of refugees, asylum-seekers and migrants is inherently undesirable.
2. Vulnerable individuals—including refugees, children, pregnant women, nursing mothers, survivors of torture and trauma, trafficking victims, elderly persons, the disabled and those with physical or mental health needs—should not be placed in detention.
3. Children should not be detained for migration-related purposes. Their best interests must be protected in accordance with the Convention on the Rights of the Child. Children should not be separated from their caregivers, and if they are unaccompanied, care arrangements must be made.
4. Asylum-seekers should not be detained or penalized because they were compelled to enter a country irregularly or without proper documentation. They must not be detained with criminals and must have the opportunity to seek asylum and to access asylum procedures.
5. Detention should be used only as a measure of last resort. If used, it must be necessary and proportionate to the objective of identity and security checks, prevention of absconding or compliance with an expulsion order.
6. Where a person is subject to detention, alternatives must first be pursued. Governments should implement alternatives to detention that ensure the protection of the rights, dignity and well-being of individuals.
7. No one should be subject to indefinite detention. Detention should be for the shortest possible time, with defined limits on the length of detention, which are to be strictly adhered to.
8. No one should be subject to arbitrary detention. Decisions to detain must be exercised in accordance with fair policy and procedures and subject to regular independent judicial review. Detainees must have the right to challenge the lawfulness of their detention, which must include the right to legal counsel and the power of the court to release the detained individual.

⁵⁷Convention on the Rights of the Child, articles 3, 8 and 9; article 9 states that “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”

9. Conditions of detention must comply with basic minimum human rights standards. There must be regular independent monitoring of places of detention to ensure that those standards are met. States should ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁵⁸ which provides a strong legal basis for a regular and independent monitoring of places of detention.
10. The confinement of refugees in closed camps constitutes detention. Governments should consider alternatives that allow refugees freedom of movement.⁵⁹

7. Compliance with international obligations in situations of return

129. The Smuggling of Migrants Protocol clearly contemplates the return of smuggled migrants to their countries of origin. It is also clear from the obligations in article 16, paragraph 1, article 18, paragraph 8, and the savings clause in article 19, paragraph 1, that States parties to the Protocol must ensure that all processes or procedures with regard to return of smuggled migrants comply with international law, in particular human rights, refugee and humanitarian law. Article 18, paragraph 8 of the Smuggling of Migrants Protocol specifically provides that the implementation of article 18 shall not affect the obligations entered into under any applicable treaty or agreement governing, in whole or in part, the return of persons who have been smuggled. Compliance with international standards therefore requires that many issues be considered in implementing and designing return policies and programmes.

130. Return policies and programmes are most effective and sustainable when they are carried out in a safe, humane and orderly manner, so as to maximize the possibilities for returned persons to successfully reintegrate into their home country. Ensuring that returns are carried out in such a manner requires that the cooperation of the returnees be sought at all stages of the process, including at the stage of planning their return.⁶⁰ Reintegration assistance can support successful and sustainable return.⁶¹ Taking long-term approaches to effect appropriate and sustainable return can be considered a contribution to preventing migrant smuggling, because persons who are returned in unsustainable ways will continue to have an incentive to be smuggled once again from their countries of origin.

131. Voluntary return should be preferred over mandatory return. This principle is included in the Council of Europe *Twenty Guidelines on Forced Return*, Guideline 1 of which notes that “The host State should take measures to promote voluntary returns, which should be preferred to forced returns. It should regularly evaluate and improve, if necessary, the programmes which it has implemented to that effect.”⁶²

⁵⁸United Nations, *Treaty Series*, vol. 2375, No. 24841.

⁵⁹For the full position of the International Detention Coalition, see “Detention of refugees, asylum seekers and migrants: position of the International Detention Coalition”, available from http://idcoalition.org/wp-content/uploads/2008/12/idc_posterfinal.pdf.

⁶⁰See, for instance, Council of Europe, *Twenty Guidelines on Forced Return* (Strasbourg, 2005). Available from www.coe.int.

⁶¹*International Agenda for Migration Management*, p. 55.

⁶²*Twenty Guidelines on Forced Return*.

Where mandatory return must be carried out, policies should be transparent, humane and fair, and returns conducted in safety and dignity. Persons should never be forced to return to situations of danger, and all mandatory returns should be in conformity with international law standards. Mandatory returns should be carried out with the full knowledge and agreement of the country of origin, including through such measures as the conclusion of bilateral and multilateral agreements.⁶³

132. A non-citizen may be expelled only to a country that agrees to accept him or her, and shall be allowed to leave for that country.⁶⁴ Measures that compel smuggled migrants to leave a country as a group (known as “collective expulsion”) are prohibited, except where there has been reasonable and objective consideration of the particular case of each individual in the group.⁶⁵ Mass expulsions have been found to be in breach of regional human rights law.⁶⁶ The prohibition on mass expulsion is tantamount to prohibition on arbitrary return, as covered by Guideline 2 of the Council of Europe *Twenty Guidelines on Forced Return*. The guideline sets out that any decision to return a smuggled migrant is made in accordance with an established legal process that is subject to review so as to avoid arbitrariness in the decision-making process, which in turn is essential to guard against discriminatory respect for human rights.⁶⁷ Guideline 3 substantiates these considerations by adding that any removal order must be made on the basis of a reasonable and objective examination of the particular facts of each person’s case rather than through mass expulsions.⁶⁸

133. A key principle in implementing return policies is that they do not compromise the principle of non-refoulement. This means that any decision to return a smuggled migrant has to fully take into consideration any claims to international protection and the issue of whether the proposed return would violate the individual’s human rights (in particular, the right to life and the right to be free from torture or other forms of cruel, inhuman or degrading treatment or punishment) or expose the person to persecution. These considerations are essential to avoid breaching the principle of non-refoulement.⁶⁹

134. For further information on appropriate approaches to implementing return policies and programmes, refer to the Council of Europe *Twenty Guidelines on Forced Return and the UNODC Model Law against the Smuggling of Migrants*.⁷⁰

8. Compliance with international obligations in border control

135. Article 11, paragraph 1, of the Smuggling of Migrants Protocol stresses that border controls aimed at preventing and detecting smuggling of migrants are to be “without prejudice to international commitments in relation to the free movement of people”. Article 11, paragraph 2, of the Protocol, establishes that border control

⁶³*International Agenda for Migration Management*, pp. 55-56.

⁶⁴*The Rights of Non-Citizens*, p. 18.

⁶⁵*Ibid.*, referring to the European Court of Human Rights, Case of *Conka v. Belgium*.

⁶⁶*Ibid.*

⁶⁷*Twenty Guidelines on Forced Return*.

⁶⁸*Ibid.*

⁶⁹*Twenty Guidelines on Forced Return*, see Guideline 2.

⁷⁰United Nations Office on Drugs and Crime, *Model Law against the Smuggling of Migrants* (New York, 2010).
[[Available from www.unodc.org/documents/human-trafficking/Model_Law_Smuggling_of_Migrants_10-52715_Ebook.pdf.]]

measures should take into consideration other international obligations of the State party concerned, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. Compliance with international standards means that both exit and entry procedures are non-discriminatory in respect of race, religion, sex and disability. Similarly, article 11, paragraph 3, provides that carrier provisions be established “where appropriate, and without prejudice to applicable international conventions”.

136. UNHCR advocates the use of “protection-sensitive” entry systems. These are systems that take into account protection needs and the duty of States to respect their obligations under international human rights and refugee law, including the principle of non-refoulement. Protection-sensitive entry systems ensure that legitimate measures of control are not applied arbitrarily and allow for asylum-seekers and other groups with specific protection needs to be identified and granted access to a territory where their needs can be properly assessed and addressed.⁷¹ Accordingly, actions of all officials who work in such systems need to take into account human rights and humanitarian obligations, including the right of all persons to leave any country, including their own; and the right of all persons to seek asylum and other measures of international protection.

9. Protection and assistance of smuggled migrants at sea

137. The chapter of the Smuggling of Migrants Protocol concerning migrant smuggling by sea has its origins in attempts to increase the safety of migrants. An International Maritime Organization advisory circular dated 12 June 2001 outlining “Interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea” says that States should take steps, in accordance with international and domestic law, to eliminate unsafe practices associated with transporting migrants at sea; relevant provisions of this circular were reflected in the Smuggling of Migrants Protocol.⁷²

138. In any situation at sea where life is in danger, the first obligation is to address safety and any danger to life. Officials should be made aware that the duty to effect rescue is paramount and takes priority over other concerns, including law enforcement objectives. It is important for officials to be aware that in any circumstance where there is evidence of distress at sea, rescue should be conducted even where there is no suspicion of smuggling. The obligation to preserve life at sea is reflected in the language used in article 8, paragraph 5, of the Smuggling of Migrants Protocol, which provides that States parties shall take no additional measures without the express authorization of the flag State, “except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements”.

⁷¹“Protection-sensitive entry systems”, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, chap. 3. Available from the website of the Office of the United Nations High Commissioner for Refugees (www.unhcr.org). [www.unhcr.org/4d52864b9.html]]

⁷²International Maritime Organization, “Interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea” (MSC/Circ.896/Rev.1). Available from [<http://www.imo.org/OurWork/Facilitation/IllegalMigrants/Documents/MSC.1-Circ.896-REV1.pdf>]]

139. The obligation of shipmasters to render assistance to those in distress at sea is a longstanding maritime tradition and an obligation at international law. The United Nations Convention on the Law of the Sea provides that each State party “shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or the passengers: (a) to render assistance to any person found at sea in danger of being lost; and (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him” (art. 98, para. 1). The duty to render assistance is not limited to the high seas and applies in other maritime zones, for example, the exclusive economic zone. The duty to render assistance to those in distress at sea is also enshrined in other conventions, including the 1974 International Convention for the Safety of Life at Sea. Under the 1979 International Convention on Maritime Search and Rescue, States parties are obliged, to “ensure that assistance be provided to any person in distress at sea ... regardless of the nationality or status of such a person or the circumstances in which that person is found”⁷³ and to “provide for their initial medical or other needs, and deliver them to a place of safety”⁷⁴.

140. The conclusions and recommendations from meetings and expert round tables convened by UNHCR explicitly advocate a rights-based approach to rescue at sea, stating that “human rights and refugee law principles are an important point of reference in handling rescue at sea situations”.⁷⁵ Those conclusions continue: “the rescue of persons in distress at sea is not only an obligation under the international law of the sea but also a humanitarian necessity, regardless of who the people are or what their reasons are for moving”. That such principles apply to persons who are smuggled is clarified in paragraph 47 of those conclusions, which states that “measures to combat smuggling and trafficking of persons must not adversely affect the human rights and dignity of persons and must not undermine international refugee protection responsibilities”.⁷⁶

141. The General Assembly has given more prominence to issues concerning treatment of people rescued at sea in recent years. In its resolution 64/71, adopted on 4 December 2009, the General Assembly recognized that some transnational organized criminal activities threaten legitimate uses of oceans and endanger the lives of people at sea and encouraged strengthened cooperation in response.⁷⁷

142. In May 2004, the Maritime Safety Committee adopted amendments to the international law of the sea framework on treatment of persons rescued at sea. The amendments, which entered into force on 1 July 2006, include setting an obligation to provide assistance, regardless of the nationality or status of persons in distress, and mandate coordination and cooperation between States to assist in the delivery of persons rescued at sea to a place of safety.⁷⁸ In elaborating the Framework for Action, guidance has also been taken from the leaflet jointly prepared by the International

⁷³International Convention on Maritime Search and Rescue, chap. 2.1.10.

⁷⁴*Ibid.*, chap. 1.3.2.

⁷⁵Report of the Office of the United Nations High Commissioner for Refugees on the treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees (A/AC.259/17), paras. 8 and 9.

⁷⁶*Ibid.*, para 47.

⁷⁷For more information in this regard, see table 4, section G (“Cooperation in addressing migrant smuggling by sea”), below.

⁷⁸More information is available from www.imo.org/Facilitation/mainframe.asp?topic_id=398.

Maritime Organization and UNHCR entitled “Rescue at sea: a guide to principles and practice as applied to migrants and refugees”, which provides guidance on relevant legal provisions and practical procedures to ensure prompt disembarkation of survivors of rescue operations and measures to meet their specific needs.

143. The Executive Committee of UNHCR has issued a conclusion on protection safeguards in interception measures.⁷⁹ This conclusion may provide useful guidance in the development of national practice with regard to interception. For example, the Executive Committee recommends the following:

- The State within whose sovereign territory, or territorial waters, interception takes place, has the primary responsibility for addressing any protection needs of intercepted persons.
- Interception measures should take into account the fundamental difference, under international law, between those who seek and are in need of international protection, and those who can resort to the protection of their country of nationality or of another country.
- Interception measures should not result in asylum-seekers and refugees being denied access to international protection, or result in those in need of international protection being returned, directly or indirectly, to the frontiers of territories where their life or freedom would be threatened on account of a Convention⁸⁰ ground, or where the person has other grounds for protection based on international law. Intercepted persons found to be in need of international protection should have access to durable solutions.
- Intercepted persons who do not seek or who are determined not to be in need of international protection should be returned swiftly to their respective countries of origin or other country or nationality of habitual residence and States.
- All persons, including officials of a State and employees of a commercial entity, implementing interception measures should receive specialized training, including available means to direct intercepted persons expressing international protection needs to the appropriate authorities in the State where the interception has taken place, or, where appropriate, to UNHCR.⁸¹

144. The tables of the International Framework should be read in conjunction with the above considerations in formulating policies to address migrant smuggling by sea.

10. Protection of smuggled refugees or asylum-seekers

145. Article 3 of the Smuggling of Migrants Protocol adopts a wide approach to the notion of “migrant” that includes both voluntary and involuntary movements. A distinction, however, must be drawn between migrants who are generally accepted as being persons who move voluntarily and refugees who do not, and, furthermore, who may have no other choice but to use smugglers in order to escape persecution. Refugees have specific rights under international law, primarily under the 1951

⁷⁹Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 12A (A/58/12/Add.1), chap. III, sect. D. [[Available from www.unhcr.org/refworld/type,EXCONC,,,3f93b2894,0.html.]]

⁸⁰Convention relating to the Status of Refugees.

⁸¹Ibid.

Convention relating to the Status of Refugees, which is recognized in article 19, paragraph 1, of the Smuggling of Migrants Protocol. These elements are to be taken into account when considering the interpretation and the implementation of the Smuggling of Migrants Protocol.

146. Indeed, some refugees and asylum-seekers move irregularly, turning to the services of migrant smuggling networks because they are unable to gain the documents that they need to travel in an authorized manner. Such persons may have legitimate claims to international protection, for instance, under the 1951 Convention relating to the Status of Refugees or under international human rights law.

147. As mentioned elsewhere, persons who have been smuggled enjoy the right to be protected from refoulement, including protection against deportation to a country in which they may be subjected to persecution or abuse. Non-refoulement is widely considered to be a principle of customary international law. The principle is enshrined in article 33, paragraph 1, of the Convention relating to the Status of Refugees, which states that “no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”.

148. The principle of non-refoulement is also reflected in human rights law and prohibits the return of a person to a real risk of torture, inhuman and degrading treatment or other forms of irreparable harm. For instance, article 3, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment prevents a person from being returned to a place where he or she risks being tortured or treated in a cruel or inhuman way. Article 7 of the International Covenant on Civil and Political Rights and article 37, subparagraph (a), of the Convention on the Rights of the Child and customary international law also uphold this principle. The obligations with regard to non-refoulement that arise from these treaties apply to all persons (or in the case of the Convention on the Rights of the Child, all persons within the definition of a “child”), irrespective of whether they are asylum-seekers or refugees.⁸² Similarly, in its General Comment No. 6 (2005), on the treatment of unaccompanied and separated children outside their country of origin, the Committee on the Rights of the Child stated that States parties to the Convention on the Rights of the Child shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 (right to life) and 37 (right to be free from torture or other cruel, inhuman or degrading treatment or punishment and right not to be arbitrarily deprived of liberty) of the Convention.⁸³

⁸²See also Human Rights Committee, General comment No. 20 (1992) on article 7 on (prohibition of torture, or other cruel, inhuman or degrading treatment or punishment: “States parties must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement” (HRI/GEN/1/Rev.7, para. 9); and General comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant (HRI/GEN/1/Rev.7, para. 12). General comments of the Human Rights Committee are available from <http://www2.ohchr.org/english/bodies/hrc/comments.htm>.

⁸³*Official Records of the General Assembly, Sixty-first Session, Supplement No. 41 and corrigendum (A/61/41 and Corr.1), annex II, para. 27*; General comments of the Committee on the Rights of the Child are available from <http://www2.ohchr.org/english/bodies/crc/comments.htm>.

149. To uphold and respect the principle of non-refoulement, States are obliged to adopt and implement legislation and other mechanisms to ensure that smuggled persons who are refugees or are in danger of being exposed to torture or cruel or inhuman treatment are not subjected to refoulement, and ensure that any other measures taken to implement the Smuggling of Migrants Protocol do not jeopardize this principle.⁸⁴

150. The UNHCR *Agenda for Protection* sets out the mutually reinforcing relationship existing between combating migrant smuggling and upholding international protection of refugees. Goal 2 of the *Agenda for Protection* is to protect refugees within the broader context of migration, a key objective of which is to strengthen international efforts to combat smuggling. The actions that accompany this measure include considering accession to the Organized Crime Convention and its supplementary Protocols, ensuring that asylum processes are open to persons who have been the object of such conduct, and publicizing penalties imposed on smugglers.⁸⁵

11. Protection of smuggled migrants who are victims/witnesses of crime (including trafficking in persons)

151. Given that a smuggled migrant generally consents to being smuggled, they are not victims of migrant smuggling as such. However, he or she can be a victim of other crimes in the course of being smuggled. For instance, violence may be used against the migrant, or his or her life may be endangered at the hands of smugglers. Smuggled migrants also may withdraw their consent to being smuggled, for example, if they deem the conditions of transportation too dangerous, and yet be subsequently forced to continue the smuggling process. Smuggled migrants may become victims of assault or sexual violence at the hands of smugglers; others may fall victim to human trafficking.

152. Enhanced efforts are needed to combat migrant smuggling and other forms of criminality affecting migrants and to provide support to migrants who have become victims of crime.⁸⁶ The obligation to identify, assist and protect smuggled migrants who are at risk of victimization is clear from the Smuggling of Migrants Protocol itself. According to article 16, paragraph 2, of the Protocol, States parties have agreed to take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct criminalized by the Smuggling of Migrants Protocol. In addition, article 16, paragraph 3, provides that States parties shall afford appropriate assistance to migrants whose lives or safety is endangered by reason of being the object of conduct criminalized by article 6 of the Protocol. This would include situations where, for example, smuggled migrants are at risk of being further victimized by organized crime, or where smuggled migrants have been transported

⁸⁴See for example, Office of the United Nations High Commissioner for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007. Available from www.unhcr.org/refworld/docid/45f17a1a4.html.

⁸⁵*Agenda for Protection*, p. 46. The *Agenda for Protection* explicitly states that asylum procedures should be open to trafficked persons.

⁸⁶See, for instance, the *International Agenda for Migration Management*, p. 24.

in very dangerous situations, such as in locked shipping containers or lorries, whereby their physical and mental condition may have seriously deteriorated.

153. What starts out as migrant smuggling may become a situation of human trafficking. Frontline officers or border officials will not necessarily have the capacity to differentiate between different categories of migrants (for instance, possible asylum-seekers and possible victims of trafficking), and will therefore need to refer them to appropriate authorities who have the capacity to do so. They will be aided in appropriately referring migrants by having appropriate guidelines, standard operating procedures and training on these issues, along with mechanisms to ensure strong working relationships with relevant expert authorities.

154. Smuggled migrants who have been victims of any crime—not just crimes of violence — should be able to report any criminal victimization to the relevant authorities and have the opportunity to have these claims properly investigated and prosecuted. If this is not possible, smuggled migrants may become easy targets for criminals who know they can prey on smuggled migrants with relative impunity. Where criminal laws do not already cover all persons (including non-nationals), States may need to broaden application of existing criminal law offences, particularly those relating to violent crimes, to ensure that they are available to protect smuggled migrants.

155. Even where smuggled migrants are not victims of crime as a result of the smuggling process, several are witnesses to the crime of smuggling. Article 24 of the Organized Crime Convention provides that States parties should take appropriate measures to protect witnesses in criminal proceedings related to crimes including the smuggling of migrants. Further, the Smuggling of Migrants Protocol stipulates that migrants shall not become liable to criminal prosecution under the Protocol for the fact of having been smuggled (article 5). This basic provision offers guarantees encouraging such persons to testify and provide evidence against their smugglers in related proceedings in the receiving State.

156. Often, securing the prosecution of migrant smugglers requires the testimony of smuggled migrants who are witnesses to the crime of migrant smuggling. Their willingness or ability to cooperate with investigations or give testimony in judicial settings is greatly undermined if they fear intimidation or reprisals from organized criminal groups. Experience has shown that criminal justice cooperation is increased where legislation is enacted and/or policies are adopted to protect smuggled migrants who cooperate with and participate in the criminal justice process. Protection measures that are appropriate to a given situation can range from simple measures such as providing a police escort to the courtroom, offering temporary residence or using closed-circuit television (CCTV) or videoconferences to hear testimony, or allowing witness anonymity, through to more complicated measures such as resettlement of witnesses under a new identity in their own or another country. In many cases, concern about a witness's security may be efficiently addressed through (a) assistance before and during the trial, which enables them to cope with the psychological and practical implications of testifying in a court of law; (b) police measures to enhance physical security; and (c) court procedures to ensure the witness's safety during the giving of testimony.

157. A good practice example of a measure in place to protect witnesses of migrant smuggling is provided by the European Commission. In paragraph 9 of the preamble of European Commission Council Directive 2004/81/EC of 29 April 2004, on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, it is explained that the aim of the directive is to introduce “a residence permit intended for victims of trafficking in human beings, or if a Member State decides to extend the scope of this directive, to third-country nationals who have been the subject of an action to facilitate illegal immigration to whom the residence permit offers a sufficient incentive to cooperate with the competent authorities while including certain conditions to safeguard against abuse”. Measures such as these should be contemplated by States both to protect witnesses to migrant smuggling and encourage their participation in the criminal justice process, while also taking steps to ensure that such measures are not abused and exploited by migrant smugglers’ modus operandi.

12. Special considerations in protecting and assisting smuggled migrants who are unaccompanied or separated children

158. In implementing the Smuggling of Migrants Protocol, the special needs of smuggled migrants—particularly women and children—are to be taken into account. Although this principle applies only with respect to article 16, States are encouraged to recognize it as a generally applicable principle, not just in respect of women and children but also for persons with other special needs. The gender- and age-sensitive approach that has guided the elaboration of the Protocol is discussed above. In addition to addressing the special needs of smuggled migrants who are children, the special needs of unaccompanied and separated children must be flagged for their particular vulnerability. In this context, separated children are understood to be those separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily those separated from other relatives.⁸⁷ Unaccompanied children are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so.⁸⁸

159. General Comment No. 6 (2005) of the Committee on the Rights of the Child provides particular guidance on the situation of all unaccompanied or separated children who are outside their country of nationality, irrespective of their migration status.⁸⁹ Guidance in developing the International Framework for Action has been taken from General Comment No. 6, which discusses the legal obligations that States parties to the Convention on the Rights of The Child have with respect to all unaccompanied or separated children within their territory and measures for their implementation.

⁸⁷International Committee of the Red Cross, *Inter-agency Guiding Principles on Unaccompanied and Separated Children* (Geneva, 2004), p. 13. [[http://www.icrc.org/eng/assets/files/other/icrc_002_1011.pdf]]

⁸⁸*Ibid.*

⁸⁹*Official Records of the General Assembly, Sixty-first Session, Supplement No. 41 and corrigendum (A/61/41 and Corr.1), annex II; see also Regional Conference on Migration, Regional Guidelines for the Assistance to Unaccompanied Children in Cases of Repatriation, adopted at the Fourteenth Regional Conference on Migration, Guatemala City, 9 July 2009. [[<http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>]]*

C. Table 3 of the Framework for Action: prevention

160. Effective prevention strategies are not comprised solely of border control measures. Prevention begins in countries of origin with efforts to provide potential smuggled migrants with the viable option of remaining in their country of nationality or residence, and extend to transit and destination countries to encompass the cooperative law enforcement efforts to investigate and dismantle the criminal organizations behind migrant smuggling.

161. Prevention measures require an integrated approach, where necessary legislative measures are put in place alongside policies aimed at protecting and assisting migrants. Policies directed at preventing the crime of migrant smuggling need to be coherently integrated among other relevant policies, including those relating to crime, migration, education, employment, health, security, non-discrimination, economic and social development, human rights, child protection and gender equality. Prevention measures contained in the Smuggling of Migrants Protocol should also be read in conjunction with article 31 of the Organized Crime Convention, concerning prevention of all forms of organized crime.

1. Prevention of migrant smuggling by sea

162. Articles 7 to 9 of the Smuggling of Migrants Protocol should be read in the context of the international law of the sea, in particular the 1982 United Nations Convention on the Law of the Sea. Under article 8, paragraph 7, of the Smuggling of Migrants Protocol, 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, the State party may take appropriate measures in accordance with relevant domestic and international law.

163. Similarly, under the international law of the sea, a State may take action against a foreign vessel engaged in the smuggling of migrants by sea. A coastal State can take action within its territorial sea against such a vessel. Action may also be taken against a foreign vessel by a coastal State in its contiguous zone, or through the exercise of the right of hot pursuit, pursuant to articles 33 and 111 of the United Nations Convention on the Law of the Sea. The consent of the flag State to the action is not required under the applicable provisions of the Convention.

164. The United Nations Convention on the Law of the Sea includes the general principle of international law that ships have the nationality of the State whose flag they are entitled to fly (art. 91, para. 1). Ships are subject to the exclusive jurisdiction of the flag State on the high seas, save for in exceptional cases provided for in treaties and under the Convention (art. 92, para. 1). The flag State has a duty to exercise its jurisdiction and control over administrative, technical and social matters over ships flying its flag (art. 94).

165. In the contiguous zone, a coastal State may exercise the control necessary to prevent or punish infringement by a foreign vessel of its immigration laws and regulations within its territory or territorial sea (art. 33). The right of hot pursuit arises where

a coastal State has good reason to believe that a foreign ship has violated the laws and regulations of that State. Article 111 of the Convention sets out the scope of the right of hot pursuit and the procedure for the exercise of the right by a coastal State.

166. In addition, all States have a right of visit under article 110 of the Convention. Pursuant to article 110, a warship that encounters a foreign ship (other than a ship entitled to immunity) on the high seas may visit and board the ship if there are reasonable grounds for suspecting that the ship is engaged in certain activities, including where the ship is without nationality or, although flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship. Article 110 also applies to the exclusive economic zone, and the right of visit may be exercised in accordance with the provisions of article 58 of the Convention. The right of visit is an exception to the general principle of exclusive jurisdiction of a flag State over its ships on the high seas (art. 92). Furthermore, it must be stressed that interception of migrants at sea should not lead to situations of distress nor jeopardize the principle of non-refoulement.

167. In the conclusions and recommendations from meetings and expert round tables convened by the Office of the UNHCR report, it is noted that

It is critical that flag States exercise effective jurisdiction and control over their vessels, particularly by prohibiting them to be used for smuggling or trafficking purposes. Strict compliance with safety standards set out in relevant international instruments is also necessary. Unseaworthy vessels should not be permitted to sail ... Effective measures are required to prevent small ships and other ships that are not subject to international regulation from being used for smuggling or trafficking purposes. Some States may require assistance and support in that regard.”⁹⁰

These conclusions and recommendations underscore the essentiality not only of intercepting migrant smuggling by sea but also of acting to prevent smuggling by sea from occurring.

2. Border measures

168. States have a duty and responsibility to control their borders so as to prevent migrant smuggling. The key challenge for States in regulating their borders is to do so in a way that is compliant with the Organized Crime Convention and its supplementary Smuggling of Migrants Protocol, as well as being efficient, effective, fair and consistent with other international standards, including those concerning human rights, refugee and humanitarian protection. In designing and implementing border protection measures, the realities of migration must be taken into consideration. Where people have no choice but to leave a place, strong border controls can have no deterrent impact but will only make it more difficult for them to move, possibly fuelling demand for smuggling services to circumvent border controls in ways that may risk lives and safety.

⁹⁰See report of the Office of the United Nations High Commissioner for Refugees on the treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees (A/AC.259/17, paras. 11 and 12).

169. States should consider procedures including pre-screening of arriving persons and pre-reporting by carriers of passengers and use of modern technology including biometrics. Training of border officials in migrant smuggling should also seek to raise awareness and build capacity in respect of national and international law requirements in border control, as well as obligations to protect and assist smuggled migrants. As the issues involved in achieving compliance with international standards in border control are complex, it is likely that States will need to consider the development of tools to facilitate implementation, such as codes of conduct, standard operating procedures and specialized training for border officials.

170. The sum of these considerations underlines the need for border control measures not to be assessed, designed and revised purely on the basis of their impact on preventing, discouraging or conversely increasing migrant smuggling, but also to be measured in terms of the human cost of such measures.⁹¹

3. Measures pertaining to documents

171. Both the issuance, the information contained in and the security control of documents must be in compliance with international standards. Article 12, subparagraph (a) of the Smuggling of Migrants Protocol requires that travel and identity documents be of such quality that they cannot be altered or misused, while article 12, subparagraph (b), requires that the security of the States parties' travel documents be ensured so that they cannot be unlawfully issued. In short, article 12, subparagraph (a), refers to the actual quality of documents themselves, while article 12, subparagraph (b), refers to the process of issuing documents, so that such processes cannot be infiltrated or corrupted by migrant smugglers. Article 13 seeks to reduce the risk of misuse and increase the probability of detection by requiring States parties to verify within a reasonable time whether a document purporting to have been issued by them is genuine and valid or not.

4. Training and technical assistance

172. A survey of implementation of the Smuggling of Migrants Protocol shows that many State signatories lack the necessary capacity, technical expertise and financial human resources to give effect to the Protocol at the domestic level.⁹² It is recommended that high priority be accorded to the promotion of technical assistance programmes, activities and projects, including training programmes for investigators, prosecutors, judges and law enforcement officers. Such programmes could be accompanied by initiatives such as the placement of mentors to provide assistance and dissemination of best practices.⁹³

173. Article 14 of the Protocol is explicit on the nature of training to be provided in relation to migrant smuggling. Article 14, paragraph 1, obliges States parties to

⁹¹See for instance *Irregular Migration, Migrant Smuggling and Human Rights*, p. 91, "The evidence suggests that, taken in isolation, policies that narrowly attempt to exclude migrants from reaching and crossing borders will fail, at high cost to human life."

⁹²This survey is based on document CTOC/COP/2005/4/Rev.2. [[www.unodc.org/documents/treaties/COP2008/CTOC%20COP%202005%204%20Rev2%20Final%20E.pdf]]

⁹³*Ibid.*, para. 36.

provide or strengthen training on preventing migrant smuggling and in “the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol”. Article 14, paragraph 2, of the Protocol explicitly notes that cooperation among competent international organizations, non-governmental organizations, other relevant organizations and civil society actors should be undertaken in the delivery of such training, which shall include training on:

- Improving the security and quality of travel documents
- Recognizing and detecting fraudulent travel or identity documents
- Gathering criminal intelligence relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in migrant smuggling, the methods used to transport smuggled migrants, the misuse of travel or identity documents for migrant smuggling and the means of concealment used in the smuggling of migrants
- Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit
- The humane treatment of migrants and the protection of their rights⁹⁴

174. In addition, the specific needs and rights of refugees should be taken into account in such trainings.

175. Article 14, paragraph 3, instructs States to consider providing technical assistance to other States that are frequently countries of origin or transit for migrant smuggling and to make every effort to provide necessary resources to combat migrant smuggling. Best practice would build upon article 14, paragraph 3, to also include countries of destination as recipients of technical assistance.

176. In some contexts, technical assistance and cooperation is necessary to support capacity-building in the areas of data collection, research and exchange of information. Such assistance should not only seek to strengthen capacity to understand national situations but also contribute to an international picture of migrant smuggling. Such data should be disaggregated by age, gender, nationality and ethnicity and offer insight into the vulnerabilities that lead a smuggled migrant into a situation of being smuggled.

5. Public awareness campaigns

177. Research has shown that public awareness campaigns must accompany criminal justice measures to prevent migrant smuggling. At the outset, media and public policy positions should take into account the need to raise awareness of migrant smuggling and related issues.

178. In addition, efforts should be strengthened to raise awareness at all levels through public information campaigns about the adverse effects of migrant smuggling in order to deter potential migrant smugglers and to warn those vulnerable to being smuggled about the dangers involved.⁹⁵ Such measures are in accordance

⁹⁴Article 14, paragraph 2, of the Smuggling of Migrants Protocol.

⁹⁵*International Agenda for Migration Management*, p. 44.

with article 15 of the Smuggling of Migrants Protocol, which urges States parties to raise awareness among potential smuggled migrants of the options for regular migration and the dangers of entrusting their lives and safety to the hands of smugglers, while also informing them of their right to leave their own country and seek asylum.⁹⁶ Article 12, subparagraph (b), of the International Covenant on Civil and Political Rights implies that information campaigns should take into consideration the right of all persons to leave any country, including their own, and the right of persons to seek asylum.

179. Beyond the specific messages suggested by article 15 of the Smuggling of Migrants Protocol, it is suggested that information to stimulate discourse about migrant smuggling should also be disseminated. The dissemination of accurate, objective and adequate information on migration policies and procedures enables migrants to make informed decisions and informs public opinion.⁹⁷ Further, the International Council on Human Rights Policy has urged that public awareness campaigns should emphasize the benefits as well as the costs of migration, and the dignity and value of migrants and their cultures. Public communication strategies should seek to present a rational picture of migration; as part of such a strategy, Governments should explain to the public the obligations that they have accepted, which provide certain protections to migrants and which are, in addition, fundamental to the freedom and well-being of all people on the country's territory.

6. Addressing root causes

180. In its preamble, the Smuggling of Migrants Protocol declares that effective action to prevent and combat migrant smuggling includes socio-economic measures, among other things. This notion is contained in mandatory provision in article 15, paragraph 3, of the Smuggling of Migrants Protocol, which requires States to promote or strengthen “development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment”. Additionally, conflict, human rights abuse and persecution can also contribute to the movement of people.

181. This preventative measure was also stressed by the Global Commission on International Migration, which has promoted combating root causes through poverty alleviation and addressing underdevelopment and lack of equal opportunities and by paying special attention to economically and socially depressed areas by creating jobs and sustainable livelihoods in developing countries so that citizens of such States do not feel compelled to migrate, and by pursuing economic policies and implementing existing commitments.⁹⁸ With respect to countries of origin, this means that States need to take measures to ensure that poverty, gender and other discrimination, lack of education and employment and weak governance systems are addressed so as to reduce demand for smuggling services.

⁹⁶Smuggling of Migrants Protocol, art. 15, paras. 1 and 2.

⁹⁷*International Agenda for Migration Management*.

⁹⁸See for instance, *Migration in an Interconnected World: New Directions for Action*, recommendation 6.

182. The Global Commission on International Migration further recommended that States should address the conditions that lead to migrant smuggling by providing additional opportunities for regular migration and taking action against employers who engage smuggled migrants.⁹⁹ Similarly, it is noted in the International Agenda for Migration Management that providing adequate and regular channels for migration is an essential element of a comprehensive approach to migration management.¹⁰⁰ This notion of regular migration channels acting to reduce irregular migration has more recently been stressed by the International Council for Human Rights Policy which has stated that “since irregular migration is driven by unequal access to opportunity, States will need to address the incentives that cause people to migrate”.¹⁰¹ To address this root cause of migrant smuggling requires destination States to take measures against those who fuel smuggling services or demand the services of smuggled persons and, potentially, to undercut smuggling services by providing opportunities for regular migration that outstrip demand for smuggling services.

D. Table 4 of the Framework for Action: cooperation (and coordination)

183. Where there is no cooperation among the various actors involved in responding to migrant smuggling and related issues, the phenomenon will be only haphazardly addressed. Where responses are not coordinated, there will be duplication of efforts and inefficient use of resources. That underlines the need for Member States to put in place and strengthen inter-agency coordination and cooperation mechanisms that allow for information exchange, strategic planning, division of responsibility and sustainability of results. Best practice shows that all relevant stakeholders including government institutions, non-governmental organizations, service providers and the private sector should be engaged in addressing migrant smuggling, from the point of conception and development of policies through to their operational implementation and the sharing of information and experiences.

184. At the international level, facilitating cooperation may require the establishment of a legal basis, promotion of both formal and informal cooperation processes and strengthened capacity both through delivering and/or receiving technical assistance and joint programming among international and regional organizations to channel expertise towards common goals. The Organized Crime Convention offers an effective basis for cooperation to address migrant smuggling.

1. National coordination and cooperation

185. Given that addressing migrant smuggling is complex and necessarily involves multiple agencies with important roles to play, coordination and cooperation at the

⁹⁹Ibid., p. 80. In this context it must be stressed that compliance with the Smuggling of Migrants Protocol would require that the element of financial or material gain be established.

¹⁰⁰International Agenda for Migration Management, p. 24.

¹⁰¹Irregular Migration, Migrant Smuggling and Human Rights, p. 91.

national level requires that responsible authorities be brought into the process of combating migrant smuggling, including through inter-ministerial consultations and that the various strands of relevant policy be tied together into a comprehensive response. Member States may also consider centralizing migration-related issues in a dedicated ministry or agency. Experience suggests that the establishment of an inter-agency coordinating body to work on smuggling issues “across Government” greatly assists in both policy and operational coordination. Such a body can provide agencies with a forum for regular meetings and discussions to undertake planning, as well as policy and operational issues. Depending on the country concerned, the establishment of such a body may or may not involve legislation.

186. All national approaches to migrant smuggling should be consistent with other relevant national policies in related areas, as well as regional and international approaches. This means that the development of migrant smuggling policies should be conducted in consultation with relevant stakeholders, including international organizations, as well as non-governmental and civil society actors. In addition to strengthening the effectiveness of policies by ensuring that migrant smuggling policies are integrated with other relevant policies (such as crime, migration, health, security and gender sectors), such an approach is also likely to enhance public acceptability and effectiveness of policies.

2. Formal international cooperation

187. Effective practices for cooperation at the inter-State level require regular opportunities for engagement in political and operational dialogue between States and non-State actors with a view to strengthening the knowledge-base and cooperative approach of migrant smuggling responses. Regional and subregional consultative processes have been offered as effective means to enhance cooperation.¹⁰²

188. Formal international cooperation includes mutual assistance, extradition and transfer of sentenced persons to support the prosecution of transnational organized criminal groups involved in migrant smuggling. Facilitating these cooperative efforts may require drafting or amending appropriate national legislation and adoption of other measures to facilitate the provision and acceptance of mutual assistance, including cooperative capacity-building measures.¹⁰³ Essentially, the Organized Crime Convention provides a basis for international cooperation to address migrant smuggling.

3. Investigative and operational cooperation

189. As it is a crime that transcends borders, migrant smuggling can be countered only through a cross-border law enforcement response. The mandatory provisions contained in article 27 of the Organized Crime Convention offer guidance and a basis for such cooperation. Joint investigations are included in article 19 of the Convention to ensure that migrant smuggling crimes are properly investigated on a

¹⁰²For instance, the Bali Process, the Puebla Process and the Budapest Process.

¹⁰³*International Agenda for Migration Management*, p. 44.

bilateral or multilateral level, as needed. Article 13 of the Convention provides a framework for cooperation in confiscation of proceeds, equipment or other instrumentalities acquired in the commission of or for the purpose of smuggling of migrants.

4. Information exchange

190. States should endeavour to facilitate the bilateral and multilateral exchange of experience and information to improve the knowledge base and achieve an overview of migrant smuggling so as to enhance international cooperation against migrant smuggling.¹⁰⁴ Effective information exchange depends on effective data collection and research. The International Agenda for Migration Management stresses that objective, reliable and accurate data should be collected, national networks should be appointed to collect, analyse and disseminate information, the various roles of actors involved in collecting data should be clarified and coordination between them strengthened at the national and international levels, data collection systems (as well as definitions and criteria) should be progressively harmonized, and technical assistance and capacity-building activities should be undertaken to strengthen data collection and management capacity.¹⁰⁵ The Smuggling of Migrants Protocol adds to this the need to collect data and conduct research on embarkation and destination points, routes and carriers and means of transportation and methods of organizations known or suspected of being involved in migrant smuggling, as well as document alteration and/or misuse, means and methods of concealment in transportation, legislative experiences and practices for preventing migrant smuggling and information to enhance prevention, detection and investigation of migrant smuggling (art. 10, para. 1).

191. Such data and research on migrant smuggling should be exchanged between States to strengthen capacities and coordinate responses. This can be achieved through promoting bilateral and multilateral exchange of information, data and experience at the policy and operational levels, strengthening the exchange of information about policies, legislation and other mechanisms in place to address migrant smuggling and promoting data- and information-sharing arrangements between States, including other relevant stakeholders where appropriate (Protocol, art. 10, para. 2).

5. Cooperation in respect of border measures

192. A clear way to strengthen border control is to strengthen cooperation across borders. While increased border cooperation is not a mandatory requirement, article 11, paragraphs 1 and 6, of the Smuggling of Migrants Protocol require States to consider strengthening such cooperation, including through the establishment of direct channels of communication. Beyond this, States can consider putting in place measures that increase the cooperative relationship between border officials and strengthen the exchange and sharing of information, skill and experiences in a way that enhances border measures in response to smuggling of migrants.

¹⁰⁴Ibid.

¹⁰⁵*International Agenda for Migration Management*, pp. 68 and 69.

6. Cooperation in training and technical assistance

193. Article 14, paragraph 2, of the Smuggling of Migrants Protocol, in addition to specifying the content required to fulfil training obligations in the Protocol, requires that States parties cooperate with “competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society, as appropriate, to ensure that there is adequate personnel training” in order to prevent, combat and eradicate migrant smuggling and to protect the rights of smuggled migrants. Identifying entities that are appropriate cooperation partners requires a creative approach to issues relevant to migrant smuggling. For instance, some relevant entities will be active in migration issues more generally, while others may be active specifically in protection issues.

194. The Protocol, in article 14, paragraph 3, calls for relevant technical assistance to countries of origin or transit. Best practice takes such a recommendation further and ensures that technical assistance is not only provided to origin and transit countries but also to destination countries that lack relevant knowledge, information, capacity and resources to address migrant smuggling.

7. Cooperation in addressing migrant smuggling by sea

195. Transnational criminal organizations have been recognized as taking advantage of vulnerabilities of States, in particular coastal and small island developing States in transit areas, to smuggle migrants by sea.¹⁰⁶ Migrant smuggling by sea has also been recognized as posing a threat to not only the legitimate use of oceans but also the lives of people at sea.¹⁰⁷ In the light of these considerations, in its resolution 64/71, the General Assembly called upon States and relevant intergovernmental organizations to increase cooperation and coordination at all levels to detect and suppress migrant smuggling and underlined the particular importance of enhancing international cooperation to address migrant smuggling at sea, in accordance with the Organized Crime Convention and the Smuggling of Migrants Protocol.¹⁰⁸

196. Articles 7 to 9 of the Smuggling of Migrants Protocol establish a framework for cooperation between States parties to act in relation to smuggling of migrants by sea. Article 7 provides that States parties cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with international law of the sea. A State party, in respect of a vessel that is flying its flag or claiming its registry, or a vessel without nationality or assimilated to a vessel without nationality, is to request the assistance of another State party in suppressing the use of the vessel for the purpose of smuggling of migrants (art. 8, para. 1). In addition, the framework includes a mechanism for a State party, in respect of a vessel flying its flag, to authorize another State party to board, search and take other appropriate measures in respect of the vessel to suppress the use of the vessel for the purpose of smuggling of migrants by sea (art. 8, para. 2). In short, a State party may seek to cooperate with other States parties with respect to its own flagged vessels, vessels

¹⁰⁶General Assembly resolution 64/71, para. 89.

¹⁰⁷*Ibid.*, para. 88.

¹⁰⁸*Ibid.*, paras. 90 and 91.

flying the flag of other States parties, vessels without nationality or a vessel assimilated to a vessel without nationality.

8. Cooperation in prevention

197. At the outset, cooperation to prevent migrant smuggling requires information exchange across borders. States should harmonize their border control measures in order to increase efficiency and ensure that responsibility for preventing migrant smuggling is shared appropriately among States. Cooperation on border measures against migrant smuggling must be strengthened while cooperation in respect of documents is necessary to both detect migrant smuggling and to facilitate return. Cooperation in the delivery of training and technical assistance on investigating and prosecuting migrant smuggling is an effective means of harmonizing understanding of migrant smuggling and forging relationships between criminal justice actors in different jurisdictions. Finally, cooperation in prevention includes collaborating with stakeholders in the design and implementation of public awareness-raising campaigns and the delivery of development programmes to ensure that appropriate information and assistance reaches appropriate target audiences.¹⁰⁹

198. Article 31, paragraph 7, of the Organized Crime Convention mandates that States parties should collaborate with each other and with relevant international and regional organizations in preventing transnational organized crime, including participation in international projects aimed at preventing transnational organized crime, for example, by alleviating the circumstances that render socially marginalized groups vulnerable to the actions of transnational organized crime.

9. Cooperation in return of smuggled migrants

199. Where a person is found not to be in need of international protection, return can only occur in a safe, humane and orderly manner, in which authorities of the countries of origin, transit and destination effectively cooperate to return smuggled migrants with due respect for their rights and safety. The cooperation of authorities in all relevant countries must be secured in order to facilitate return. In order to carry out return of smuggled migrants, effective cooperation is required between the State where the migrant is and the State where the migrant is being returned. Countries where smuggled migrants are being returned are required to facilitate and accept smuggled migrants, verify whether persons are nationals or permanent residents, and issue any travel document that may be required to facilitate their return. Beyond that inter-State cooperation, under the Smuggling of Migrants Protocol, relevant international organizations must be involved in the return process to ensure that such return is carried out in a safe, humane and orderly manner (art. 18). This may require that appropriate bilateral, multilateral or other agreements be put in place. It is also imperative that no return arrangement or procedure undermine other international obligations, including human rights, humanitarian and refugee law, in particular, the principle of non-refoulement (art. 18, paras. 6 and 7).

¹⁰⁹Article 15 of the Smuggling of Migrants Protocol.

200. Bilateral agreements may be necessary to facilitate voluntary or mandatory return of smuggled migrants, including for the purpose of ensuring that States of origin fulfil their obligations to accept return of their nationals or permanent residents. States of origin are required to “facilitate and accept” the return of nationals and to consider cooperation in the return of those with some rights of residency short of citizenship, including through the issuance of documents needed to allow the travel of such persons back from countries to which they have been smuggled.¹¹⁰ The requirement to accept the return of nationals and to consider accepting the return of others depends on the status of the individual concerned.

201. Article 18, paragraph 1, of the Smuggling of Migrants Protocol was adopted on the understanding that a return would not be undertaken before the nationality or right of permanent residence of the person in question has been duly verified. Also, the term “permanent residence” is understood as meaning:

“long-term, but not necessarily indefinite residence. This article is understood not to prejudice national legislation regarding the granting of the right of residence or the duration of residence.”¹¹¹

202. Article 18, paragraph 2, of the Protocol requires States parties to “consider the possibility” of facilitating and accepting the return of smuggled migrants who “had the right of permanent entry in its territory at the time of entry into the receiving State in accordance with its domestic law”.

203. Countries to which smuggled migrants are being return should comply with article 12, paragraph 4, of the International Covenant on Civil and Political Rights, which states that “no one shall be arbitrarily deprived of the right to enter his own country”. This has been interpreted as applying both to citizens of that country and to persons who have a long-term relationship with it but are not citizens. The Human Rights Committee has noted that requiring lawfully permanent residents to obtain return visas to re-enter the State may not comply with article 12, paragraph 4, of the International Covenant.¹¹²

204. The exchange between States of some personal data about smuggled migrants will be necessary to facilitate the return process. However, it is vital that steps are put in place to ensure that any information exchange does not put smuggled migrants (or their families) in danger. Without these protections, States may inadvertently expose the smuggled migrant to a risk of retaliation on their return to their country of origin. Good practice with regard to treatment of information about smuggled migrants is reflected in Guideline 12 of the Council of Europe *Twenty Guidelines on Forced Return* concerning cooperation between States:

1. The host State and the State of return shall cooperate in order to facilitate the return of foreigners who are found to be staying illegally in the host State.

¹¹⁰*Legislative Guides*, p. 390.

¹¹¹Interpretative notes for the official records (travaux préparatoires) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (A/55/383/Add.1, paras. 111-116, reproduced in the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), p. 552.

¹¹²*The Rights of Non-Citizens*, p. 18.

2. In carrying out such cooperation, the host State and the State of return shall respect the restrictions imposed on the processing of personal data relating to the reasons for which a person is being returned. The State of origin is under the same obligation where its authorities are contacted with a view to establishing the identity, the nationality or place of residence of the returnee.
3. The restrictions imposed on the processing of such personal data are without prejudice to any exchange of information which may take place in the context of judicial or police cooperation, where the necessary safeguards are provided.
4. The host State shall exercise due diligence to ensure that the exchange of information between its authorities and the authorities of the state of return will not put the returnee, or his/her relatives, in danger upon return. In particular, the host State should not share information relating to the asylum application.¹¹³

205. Though not a mandatory provision, good practice is for return to take place in cooperation with relevant international organizations, as provided for in article 18, paragraph 6, of the Smuggling of Migrants Protocol. For instance, international organizations such as UNHCR and the International Organization for Migration are relevant to the issue of return. In addition, other actors such as non-governmental organizations and civil society actors may also be relevant to carrying out affective return.

¹¹³Available from www.coe.int.

Part Two

International Framework for Action to Implement the Smuggling of Migrants Protocol

TABLE 1. PROSECUTION (AND INVESTIGATION)

| A | B | C | D | E |
|--|---|---|--|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES (Intent of the provisions) | FRAMEWORK REQUIREMENTS (Minimum standards for action) | IMPLEMENTATION MEASURES (Best practices to achieve effective implementation) | OPERATIONAL INDICATORS (To measure and help monitor implementation over time) |
| <p>1</p> <p>Criminalization of migrant smuggling in accordance with the definition in the Smuggling of Migrants Protocol (arts. 3 and 4 and art. 6, para. 1 (a), of the Smuggling of Migrants Protocol)</p> | <p>To harmonize legislation to counter migrant smuggling globally in order to facilitate the transnational response to transnational crime</p> <p>To provide a basis for prevention, investigation and prosecution of migrant smuggling and related conduct where those offences are transnational in nature and involve an organized criminal group, as well as for the protection of smuggled migrants (art. 4 of the Protocol)</p> <p>To promote adoption of legislative and other measures as may be necessary to establish migrant smuggling and related conduct as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit</p> <p>To not prevent a State party from taking measures against a person whose conduct constitutes an offence under its domestic law (art. 6, para. 4, of the Protocol)</p> | <p>Ratification or accession to the Organized Crime Convention and the Smuggling of Migrants Protocol</p> <p>Comprehensive legislation in place, criminalizing migrant smuggling in accordance with the definition in article 3 of the Protocol: “shall mean the directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident” (art. 3, subpara. (a))</p> <p>Profit motive (financial or material gain) and requisite intention required to prove migrant smuggling or related conduct</p> <p>Implementation of the Protocol applies to offences that are transnational in nature and involve an organized criminal group, as well as to protection of smuggled migrants (art. 4 of the Protocol)</p> | <p>Ratify or accede to the Organized Crime Convention and the Smuggling of Migrants Protocol</p> <p>Review and enact or amend legislation in compliance with article 3 and article 6, paragraph 1 (a), of the Protocol</p> <p>Build capacity of parliamentarians, policymakers and legislators on migrant smuggling and related issues</p> <p>Elaborate and disseminate materials on migrant smuggling legislation among law enforcers and prosecutors</p> <p>Monitor and evaluate the effectiveness of laws and policies to combat migrant smuggling, for instance, by establishing or empowering independent monitoring and evaluation institutions to investigate migrant smuggling</p> | <p>State is party to the Organized Crime Convention and the Smuggling of Migrants Protocol</p> <p>Legislation in place criminalizing migrant smuggling in compliance with the Protocol</p> <p>Increase in capacity of parliamentarians, legislators, policymakers, law enforcers and prosecutors on migrant smuggling and related conduct</p> <p>Evidence that States have taken steps to disseminate materials on migrant smuggling legislation among investigators and prosecutors</p> <p>Independent institutions in place monitor policies implementing migrant smuggling legislation in light of changed dynamics of the migrant smuggling phenomenon</p> |
| CRIMINALIZATION OF MIGRANT SMUGGLING AND RELATED CONDUCT | | | | |

TABLE 1. PROSECUTION (AND INVESTIGATION) (Continued)

| A | B | C | D | E |
|---------------------|---|--|--|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| 2 | Criminalization of offences in relation to travel or identity documents (art. 6, para. 1 (b), of the Smuggling of Migrants Protocol) | Criminalization and prosecution of migrant smugglers for producing, procuring, providing or possessing a fraudulent travel or identity document, in order to obtain a financial or other material benefit, for the purpose of enabling migrant smuggling | Review and enact or amend legislation in compliance with article 6, paragraph 1 (b), of the Protocol, either through a separate offence in relation to each document offence, or combined in a single provision Implement legislation by passing or issuing regulations, circulars, guidelines or instructions to explain offence | Evidence that comprehensive legislation in compliance with the Organized Crime Convention and the Smuggling of Migrants Protocol (art. 6, para. 1 (b)), drafted broadly so that all “fraudulent” document scenarios are captured, including documents that have been “falsely made”, altered, or improperly used Increase in investigations and prosecutions of offences relating to fraudulent travel or identity documents produced to enable migrant smuggling |
| 3 | Criminalization of enabling the stay of smuggled migrants (art. 6, para. 1 (c), of the Smuggling of Migrants Protocol) | Comprehensive legislation criminalizing migrant smuggling in place establishing the offence of enabling a person to remain in a country where the person is not a legal resident or citizen, without complying with requirements for legally remaining, in order to obtain a financial or other material benefit | Review and enact or amend legislation in compliance with article 6, paragraph 1 (c), of the Protocol, and/or adopt other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit: enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with necessary requirements for legally remaining (art. 6, para. 1 (c), of the Protocol) | Legislation in place criminalizing actions that enable a person who is not a national or permanent resident to remain in the State concerned without complying with necessary requirements, for financial or material gain, in compliance with the Organized Crime Convention and article 6, paragraph 1 (c), of the Smuggling of Migrants Protocol, resulting in increased investigations and prosecutions of enabling stay Measures in place to reduce employment of smuggling migrants and impose sanctions on employers of smuggled migrants without prejudice to the rights of smuggled migrants |

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| 4 | <p>Criminalization of attempting, participating as an accomplice and organizing and directing other persons to commit migrant smuggling or related offences (art. 6, para. 2, of the Smuggling of Migrants Protocol)</p> | <p>To ensure that migrant smuggling legislation applies even when migrant smuggling offence(s) have not been fully realized</p> <p>To ensure that participants, accomplices, organizers and directors of migrant smuggling crimes are captured by legislation to counter migrant smuggling</p> | <p>Legislative or other measures as may be necessary in place to establish as criminal offences: attempting to commit a migrant smuggling or related offence, subject to the basic concepts of the State's legal system (art. 6, para. 2 (a), of the Protocol); participating as an accomplice in migrant smuggling and related offences (art. 6, para. 2 (b), of the Protocol); organizing or directing other persons to commit migrant smuggling or a related offence (art. 6, para. 2 (c), of the Protocol)</p> | <p>Take adequate and effective measures to eliminate employment of smuggled migrants, including, whenever appropriate, sanctions on employers, without impairing the rights of smuggled migrants vis-à-vis their employer (art. 19 of the Smuggling of Migrants Protocol and art. 68, para. 2, of the International Convention on the Protection of All Migrant Workers and Members of Their Families)</p> | |
| | | <p>Subject to the basic concepts of legal system, criminalize attempting, participating as an accomplice or organizing or directing migrant smuggling</p> <p>Review and enact or amend legislation to prohibit non-completion of offence from being considered a defence where an attempt is made</p> <p>Review and enact or amend legislation so that "attempt" is understood to refer to both acts done in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit an offence</p> <p>Where criminalization of attempt is not possible, put in place other means of reinforcing migrant smuggling and related offences, such as through criminalization of individual elements of offences that could still be prosecuted when offence is not complete (e.g. offences such as transporting or concealing migrants for the purpose of smuggling them)</p> | <p>Legislation in place criminalizing attempted offences, as well as participating as an accomplice, organizing or directing others in migrant smuggling, resulting in increased investigations and/or prosecutions</p> <p>Evidence that non-completion of an attempted offence is not considered a defence</p> <p>Evidence that "attempt" is understood to refer to both acts done in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit an offence</p> <p>Increase in successful prosecutions and convictions of migrant smugglers for migrant smuggling and related offences, or for other criminal acts in the absence of specific migrant smuggling offences</p> | | |

TABLE 1. PROSECUTION (AND INVESTIGATION) (Continued)

| A | B | C | D | E |
|---|---|--|---|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| 5 | <p>Non-criminalization of migrants for having been smuggled (art. 5 of the Smuggling of Migrants Protocol and in accordance with art. 6, para. 4, of the Protocol)</p> | <p>Domestic migrant smuggling legislation does not criminalize migrants for having been smuggled</p> <p>The Smuggling of Migrants Protocol is not used as a basis for criminalizing migrants themselves or migration in any way</p> <p>Non-criminalization of support to smuggled migrants where there is no financial or material gain</p> <p>Smuggled refugees and asylum-seekers are exempt from penalties for illegal entry and related offences (art. 31 of the Refugee Convention)</p> | <p>Incorporate in domestic migrant smuggling legislation a provision on non-criminalization of smuggled migrants for having been smuggled</p> <p>Establish national human rights institution/ombudsman or, where such an entity exists, expand its mandate to report on issues of migrant smuggling</p> <p>Review and enact or amend legislation to explicitly exempt smuggled asylum-seekers and refugees seeking protection from penalties for illegal entry</p> <p>Remove barriers to smuggled migrants' access to protection and assistance, including rights and humanitarian protection</p> | <p>Evidence that legislation does not criminalize smuggled migrants for having been smuggled, that smuggled migrants are not prosecuted for smuggling offences relating to their own movement and that appeals against decisions are possible</p> <p>Independent mechanism for monitoring in place to assess whether States are targeting smugglers rather than migrants</p> <p>Asylum-seekers and refugees are exempt from penalties for illegal entry</p> <p>Evidence that smuggled migrants' access to protection and assistance's in no way obstructed by virtue of their having been smuggled</p> |
| 6 | <p>Liability of legal persons (art. 10 of the Organized Crime Convention)</p> | <p>Criminal, civil or administrative measures in place, consistent with domestic legal principles, to establish liability of natural and legal persons for migrant smuggling (art. 10, para. 1, and art. 2 of the Organized Crime Convention)</p> | <p>Review and enact or amend legislation to provide for effective, proportionate and dissuasive criminal or non-criminal sanctions for legal persons held liable for migrant smuggling (art. 10, para. 4, of the Organized Crime Convention)</p> | <p>Evidence that effective, proportionate and dissuasive criminal or non-criminal sanctions are imposed on migrant smugglers</p> <p>Legislative and other criminal, civil or administrative measures are in place to establish liability of legal persons, in accordance with domestic legal principles</p> |
| OTHER NECESSARY LEGISLATIVE MEASURES | | | | |

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|----------|--|---|--|--|---|
| | | <p>To ensure that individual smugglers can not hide behind a legal entity to perpetrate and escape prosecution for migrant smuggling</p> | <p>Prosecution and sanction of both individuals and legal persons, where the former commits crime on behalf of the latter (art. 10, para. 3, of the Organized Crime Convention)</p> <p>Subject legal persons held liable for migrant smuggling to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions (art. 10, para. 4, of the Organized Crime Convention)</p> | <p>Put in place criminal, civil or administrative measures, consistent with domestic legal principles, to establish liability of both natural and legal persons for migrant smuggling (art. 10, paras. 1 and 2, of the Organized Crime Convention)</p> <p>Prosecute and impose sanctions upon both natural and legal persons for migrant smuggling</p> | <p>Increase in prosecutions of natural and legal persons for migrant smuggling</p> |
| <p>7</p> | <p>Establishment of jurisdiction over migrant smuggling (art. 15 of the Organized Crime Convention)</p> | <p>To ensure that States have jurisdiction to investigate, prosecute and punish migrant smuggling offences committed within State's territory or on board aircraft and vessels registered under their laws (art. 15, para. 1, of the Organized Crime Convention, the Convention on the Law of the Sea)</p> <p>To ensure that States have jurisdiction in migrant smuggling cases where they cannot extradite a person on grounds of nationality (art. 15, para. 3, of the Organized Crime Convention)</p> | <p>Jurisdiction established over all migrant smuggling offences committed in the territory of the State party or committed on board a vessel that is flying the flag of that State party (art. 15, para. 1, of the Organized Crime Convention), in accordance with arts. 2, 3, 8, 48-50, 60, para. 1, 80, 94 and 95 of the Convention on the Law of the Sea) and other circumstances as necessary (arts. 17-19, 21, 24, 25, 27, 33, 34, 38, 39, 42, 54, 58, paras. 2 and 3, 60, 80 and 111 of the Convention on the Law of the Sea)</p> <p>Jurisdiction established over migrant smuggling offences when alleged offender is present in State territory and not extradited (art. 15, para. 3, of the Organized Crime Convention)</p> <p>Criminal jurisdiction exercised on board a foreign vessel in certain circumstances, in accordance with article 27 of the Convention on the Law of the Sea</p> <p>Jurisdiction exercised and jurisdictional immunity respected in accordance with articles 29, 58, paras. 2 and 3, 91, 92 and 94-96 of the Convention on the Law of the Sea</p> | <p>Establish jurisdiction over migrant smuggling offences committed (a) in State's territory; (b) on board a vessel flying a State's flag; (c) on board aircraft registered under the State's laws (art. 15, para. 1, of the Organized Crime Convention) and over migrant smuggling offences where the alleged offender is in a State's territory and the State does not extradite him or her on the basis of nationality (art. 15, para. 3, of the Organized Crime Convention)</p> <p>Consider establishing jurisdiction where nationals are victimized as a result of migrant smuggling offences, or where migrant smuggling offences are committed by a national or stateless person residing in State's territory</p> <p>Consult with other interested States in appropriate circumstances in order to avoid as much as possible, the risk of improper overlapping of exercised jurisdiction (art. 15, para. 5, of the Organized Crime Convention) (See table 4 (Cooperation), 13.C)</p> | <p>Evidence that a State is entitled to exercise jurisdiction, inter alia, over migrant smuggling offences committed in the territory of that State party or on board a vessel that is flying the flag of that State party, or over foreign vessels in the contiguous zone in certain circumstances, and evidence that limited elements of jurisdiction may be exercised in the exclusive economic zone, in accordance with article 15 of the Organized Crime Convention and the Convention on the Law of the Sea</p> <p>Jurisdiction established where nationals victimized as a result of migrant smuggling offences or where migrant smuggling offences committed by a national or stateless person residing in State's territory</p> <p>Evidence of consultations with other interested States in relation to shared jurisdiction over migrant smuggling and related offences (art. 15, para. 5, of the Organized Crime Convention)</p> |

TABLE 1. PROSECUTION (AND INVESTIGATION) (Continued)

| A | B | C | D | E |
|---|---|--|--|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| 8 | Measures to enhance cooperation of migrant smugglers with law enforcement authorities (art. 26 of the Organized Crime Convention) | Incentives in place in accordance with domestic law, in order to facilitate cooperation of participants in organized criminal groups | Review and enact or amend legislation to excuse from liability or mitigate punishments (granting immunity from prosecution or comparative lenience, under certain conditions) for migrant smugglers who significantly contribute to the investigation and prosecution of a migrant smuggling offence, in accordance with existing criminal law Implement legislative and/or other measures to enhance cooperation of migrant smugglers with law enforcement authorities | Immunity and/or leniency provisions in legislation applicable to migrant smugglers who cooperate with law enforcement authorities Increased cooperation of persons involved in migrant smuggling with law enforcement authorities, resulting in successful prosecutions of migrant smugglers |
| CRIMINALIZATION OF ORGANIZED CRIME CONVENTION OFFENCES | | | | |
| 9 | Criminalization of participation in an organized criminal group (art. 5 of the Organized Crime Convention) | Participation in an organized criminal group criminalized in domestic law in accordance with the Organized Crime Convention | Review and enact or amend legislation to criminalize (for instance, through offence of conspiracy or offences proscribing involvement in criminal organizations) and to ensure application to migrant smuggling crimes Implement legislation criminalizing participation in an organized crime group to migrant smuggling crimes | Legislation criminalizing participation in organized criminal group adopted and implemented and applicable to migrant smuggling offences Increase in investigations and prosecutions of participants in an organized criminal group involved in the commission of migrant smuggling and related offences |

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|----|---|---|---|--|--|
| 10 | <p>Criminalization of the laundering of proceeds of crime (art. 6 of the Organized Crime Convention)</p> | <p>To obstruct migrant smugglers in the commission of their crimes by depriving them of their illegal gains</p> <p>To harmonize standards and legal systems against money-laundering resulting from or for the purpose of migrant smuggling</p> | <p>Legislation in place to criminalize money-laundering and to have migrant smuggling defined as a predicate offence for money-laundering and measures in place to combat money-laundering resulting from or for the purpose of migrant smuggling (arts. 6 and 7 of the Organized Crime Convention)</p> | <p>Review and enact or amend legislation to criminalize money-laundering in the commission of or for the purpose of migrant smuggling, in accordance with article 6 of the Organized Crime Convention, subject to the basic concepts of domestic law</p> <p>Institute regulatory and supervisory regimes for bodies susceptible to money-laundering (art. 7, para. 1 (a), of the Organized Crime Convention) using regional, interregional and multilateral initiatives as guidelines (art. 7, para. 3, of the Organized Crime Convention)</p> <p>Establish or expand the mandate of mechanisms to facilitate the exchange of information and cooperation between authorities dedicated to combating money-laundering at the national and international levels so that they apply to migrant smuggling (art. 7, paras. 1 (b) and 4, of the Organized Crime Convention) (See table 4 (Cooperation), 16.A)</p> <p>Implement measures to detect, monitor and report transportation of cash across borders in the commission of or for the purpose of migrant smuggling (art. 7, para. 2, of the Organized Crime Convention)</p> | <p>Money-laundering offences established in domestic law are applicable to migrant smuggling and implemented to increase investigations and prosecutions of money-laundering offences resulting from or commissioned to facilitate migrant smuggling or related crimes</p> <p>Comprehensive regulatory and supervisory regimes for bodies susceptible to money-laundering applicable to migrant smuggling</p> <p>Evidence of national and international cooperation and information exchange between and among authorities combating money-laundering in respect of migrant smuggling</p> <p>Evidence that the cross-border transportation of cash is monitored, detected and reported to authorities as appropriate, resulting in seizure and follow-up investigation</p> |
| 11 | <p>Criminalization of and measures against corruption (arts. 8 and 9 of the Organized Crime Convention and the United Nations Convention against Corruption)</p> | <p>To eliminate corruption as a means and/or contributing factor of migrant smuggling and related conduct</p> <p>To adopt effective measures to prevent, investigate and prosecute corruption in migrant smuggling cases</p> | <p>Legislation or other measures in place to criminalize corruption committed in the course of migrant smuggling, in accordance with article 8 of the Organized Crime Convention</p> | <p>Ratification and accession to the Convention against Corruption</p> <p>Review and enact or amend legislation to address corruption in relation to migrant smuggling or corruption as an aggravating circumstance of migrant smuggling cases</p> | <p>Ratification of the Convention against Corruption</p> <p>Corruption offences compliant with the Organized Crime Convention and the Convention against Corruption, and applicable to migrant smuggling contexts</p> |

TABLE 1. PROSECUTION (AND INVESTIGATION) (Continued)

| A | B | C | D | E |
|---------------------|---|---|---|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | <p>Legislation or other measures in place to criminalize participation as an accomplice in corruption (art. 8, para. 3, of the Organized Crime Convention)</p> <p>Consider putting legislation or other measures in place to establish as criminal offences, corruption involving public officials and foreign public servants (art. 8, para. 2, of the Organized Crime Convention) and other forms of corruption</p> | <p>Adopt legislative, administrative or other measures against corruption in migrant smuggling (art. 9, para. 1, of the Organized Crime Convention)</p> <p>Take measures to promote action by authorities against corruption (art. 9, para. 2, of the Organized Crime Convention)</p> <p>Provide authorities with adequate independence to deter corruption (art. 9, para. 2, of the Organized Crime Convention)</p> <p>Build anti-corruption capacity of criminal justice and other relevant actors (including border control and immigration officials) involved in addressing migrant smuggling</p> <p>Investigate and prosecute acts of corruption throughout the smuggling process, as well as before and after (during the phase of protection and assistance, return, enabling stay etc.), in countries of origin, transit and destination and in the public and private spheres</p> | <p>Legislative, administrative and/or other measures taken to prevent, detect and punish corruption in migrant smuggling</p> <p>Evidence of effective action by authorities in preventing, detecting and punishing corruption</p> <p>Evidence that authorities are adequately independent, so as to deter corruption</p> <p>Increased capacity of criminal justice and other relevant actors in anti-corruption efforts in respect of migrant smuggling</p> <p>Increased investigations, prosecutions and convictions for corruption relating to migrant smuggling, including through demanding or accepting bribes, resulting in reduced attempts to corrupt authorities</p> |

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| 12 | <p>Criminalization of obstruction of justice (art. 23 of the Organized Crime Convention)</p> | <p>To eliminate obstruction of justice with respect to migrant smuggling and related offences</p> | <p>Legislative and other measures adopted to establish as criminal offences (a) use of physical force, threats or intimidation or promise, offering or giving undue advantage to induce false testimony or to interfere in giving testimony or the production of evidence in a proceeding in relation to the commission of migrant smuggling (art. 23, subpara. (a), of the Organized Crime Convention); (b) use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of migrant smuggling (art. 23, subpara. (b), of the Organized Crime Convention)</p> | <p>Review and enact or amend legislation to criminalize for obstruction of justice, including use of physical force, threats or intimidation criminalized at domestic law in compliance with article 23 of the Organized Crime Convention</p> <p>Implement legislation relating to obstruction of justice in relation to migrant smuggling offences</p> | <p>Obstruction of justice established as criminal offences</p> <p>Increase in investigations and prosecutions of obstruction of justice in relation to migrant smuggling offences</p> |
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INVESTIGATION

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| 13 | <p>Confiscation and seizure of assets and proceeds of crime (arts. 12-14 of the Organized Crime Convention)</p> | <p>To deprive migrant smugglers of the proceeds of their crime and hamper them from financing other crimes or laundering proceeds of crime</p> | <p>Legislation and other measures on the identification, tracing and seizure of assets and confiscation of proceeds of crime in migrant smuggling are in place, in compliance with articles 12 and 14 of the Organized Crime Convention</p> | <p>Review and enact or amend legislation to allow the confiscation of direct or indirect proceeds obtained as a result of migrant smuggling, as well as means of transport that are owned by smugglers or their accomplices and are used for migrant smuggling</p> <p>Establish procedural means such as those set out in article 12 of the Organized Crime Convention to ensure effective confiscation and asset seizure</p> <p>Make use of international cooperation for confiscation of assets (art. 13 of the Organized Crime Convention)</p> | <p>Legislation in place on tracing, freezing and confiscation of the proceeds and instrumentalities of migrant smuggling offences in domestic cases and in aid of other States parties in accordance with the Organized Crime Convention</p> <p>Procedures in place to ensure effective confiscation and seizure, resulting in an increase in confiscations or seizures of assets or proceeds in migrant smuggling cases</p> <p>Increase in number of bilateral or multilateral agreements governing confiscation and seizure of assets and proceeds of crime in place</p> |
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TABLE 1. PROSECUTION (AND INVESTIGATION) (Continued)

| A | B | C | D | E |
|---------------------|---|--|--|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| 14 | Special investigative techniques (art. 20 of the Organized Crime Convention) | To support the successful investigation of migrant smuggling and ensure that investigative techniques continually modernize to stay ahead of migrant smuggling techniques | Legislation in place on the use of special investigative techniques to assist migrant smuggling investigations (including use of informants, use of undercover agents/officers, covert technical surveillance tactics, communications intercept, telephone analysis and controlled delivery in documents), in accordance with basic principles of domestic law (art. 20, para. 1, of the Organized Crime Convention) | Evidence of appropriate use of confiscated assets (i.e. through redistribution, funding criminal justice responses etc.), resulting in an increased number of crime victims compensated for crimes committed by migrant smugglers and an increased number of properties returned to legitimate owners |
| | | Legislation in place on the use of special investigative techniques to assist migrant smuggling investigations (including use of informants, use of undercover agents/officers, covert technical surveillance tactics, communications intercept, telephone analysis and controlled delivery in documents), in accordance with basic principles of domestic law (art. 20, para. 1, of the Organized Crime Convention) | Put in place procedures so that proceeds of crime or confiscated property can be used to compensate victims of crime or be returned to their legitimate owners (art. 14, para. 2, of the Organized Crime Convention) | Evidence of reduced loss of confiscated or seized assets through corruption |
| | | Legislation in place on the use of special investigative techniques to assist migrant smuggling investigations (including use of informants, use of undercover agents/officers, covert technical surveillance tactics, communications intercept, telephone analysis and controlled delivery in documents), in accordance with basic principles of domestic law (art. 20, para. 1, of the Organized Crime Convention) | Explore ways of eliminating the corrupt use of confiscated assets, for instance, through redistribution among law enforcement agents involved in investigation, as an incentive | Evidence of independent monitoring and evaluation of use of special investigative techniques to verify compliance with domestic legislation and take action on non-compliance |
| | | Legislation in place on the use of special investigative techniques to assist migrant smuggling investigations (including use of informants, use of undercover agents/officers, covert technical surveillance tactics, communications intercept, telephone analysis and controlled delivery in documents), in accordance with basic principles of domestic law (art. 20, para. 1, of the Organized Crime Convention) | Review and enact or amend legislation and to support use of special investigative techniques to investigate migrant smuggling, harmonized with human rights standards | Legislation in place governing use of special investigative techniques in migrant smuggling investigations, compliant with human rights standards |
| | | Legislation in place on the use of special investigative techniques to assist migrant smuggling investigations (including use of informants, use of undercover agents/officers, covert technical surveillance tactics, communications intercept, telephone analysis and controlled delivery in documents), in accordance with basic principles of domestic law (art. 20, para. 1, of the Organized Crime Convention) | Build capacity of investigators in using special investigative techniques, including use of informants, undercover agents/officers, covert technical surveillance tactics, communications intercept, telephone analysis and controlled delivery, as well as in relevant human rights considerations | Increased capacity of investigators to use special investigative techniques in respect of migrant smuggling investigations |
| | | Legislation in place on the use of special investigative techniques to assist migrant smuggling investigations (including use of informants, use of undercover agents/officers, covert technical surveillance tactics, communications intercept, telephone analysis and controlled delivery in documents), in accordance with basic principles of domestic law (art. 20, para. 1, of the Organized Crime Convention) | Put standard operating procedures in place to guide use of special investigative techniques | Standard operating procedures on use of special investigative techniques in place |
| | | Legal ability to participate on a case-by-case basis in international cooperation activities in place (art. 20, para. 3, of the Organized Crime Convention) | | |

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| | | | Legislation and/or other measures in place to ensure that special investigative techniques are governed and limited by international human rights standards and guidelines (art. 19, para. 1, of the Smuggling of Migrants Protocol) | Ensure that independent entities in place have power to monitor and evaluate use of special investigative techniques in migrant smuggling investigations | Evidence that allegations of human rights abuse in use of special investigative techniques investigated and appropriately sanctioned |
| | | | | Investigate allegations of human rights abuse in use of special investigative techniques | |

SANCTION

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| 15 | Sanction (art. 11 of the Organized Crime Convention) | <p>To ensure that migrant smugglers are liable to sanctions that take into account the gravity of the migrant smuggling offence (art. 11, para. 1, of the Organized Crime Convention)</p> <p>To ensure that any discretionary powers that States may have are exercised to maximize the effectiveness of law enforcement and the deterrence of migrant smuggling offences (art. 11, para. 2, of the Organized Crime Convention)</p> | <p>Legislative and other measures in place to ensure sanction for migrant smuggling in accordance with article 11, paragraph 1, of the Organized Crime Convention taking into account the gravity of the offence</p> <p>Discretionary powers are exercised to maximize the effectiveness of law enforcement and deterrence of migrant smuggling offences (art. 11, para. 2, of the Organized Crime Convention)</p> <p>Measures taken to ensure the presence of defendants at criminal proceedings against migrant smuggling (art. 11, para. 3, of the Organized Crime Convention)</p> <p>Grave nature of the migrant smuggling offence considered in decisions concerning early release of migrant smuggler (art. 11, para. 4, of the Organized Crime Convention) (See table 2 (Protection), 6(a).E and table 1 (Prosecution), 16.A)</p> | <p>Review and enact or amend legislation to ensure that sanctions for migrant smuggling take into account gravity of offence (art. 11, para. 1, of the Organized Crime Convention) making the offence of migrant smuggling punishable by a maximum deprivation of liberty of at least four years or a more serious penalty (art. 2, subpara. (b), of the Organized Crime Convention) so that it constitutes a "serious crime"</p> <p>Exercise discretionary powers to maximize the effectiveness of law enforcement and the deterrence of migrant smuggling offences (art. 11, para. 2, of the Organized Crime Convention)</p> <p>Take measures to ensure that defendants are present at criminal proceedings for migrant smuggling and do not abscond (art. 11, para. 3, of the Organized Crime Convention)</p> <p>Consider the gravity of the migrant smuggling offence when deciding on early release or parole (art. 11, para. 4, of the Organized Crime Convention)</p> | <p>Legislation in place ensuring that migrant smuggling offences constitute "serious crimes" and allowing imposition of sanctions that take into account the gravity of the migrant smuggling offence and are otherwise proportionate to the offence committed</p> <p>Evidence that discretionary powers exercised to take into account the grave nature of migrant smuggling offences, the role of the persons involved (i.e. a greater penalty for high-level actors and a lesser penalty for lower-level actors) and the result in deterrence</p> <p>Evidence that defendants are present at criminal proceedings and do not abscond</p> <p>Evidence that the gravity of the offence of migrant smuggling is considered in decisions on parole and early release</p> <p>Evidence that sanctions imposed on migrant smugglers reduce recidivism and are publicized in order to have a deterrent effect</p> <p>Independent mechanism in place to allow for the review of sanctions imposed, including auditing against discrimination</p> |
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TABLE 1. PROSECUTION (AND INVESTIGATION) (Continued)

| A | B | C | D | E | |
|---------------------|---|--|--|--|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time | |
| 16 | <p>Establishment of aggravating circumstances for migrant smuggling and related offences</p> | <p>To expose offenders to the risk of harsher punishments where aggravating circumstances are present (prosecutorial aim)</p> <p>To assist in prioritization of investigations where resources are limited and thus reduce the risk to life and safety posed by migrant smuggling and related crimes (investigatorial aim)</p> <p>To ensure that the rights of the migrant smuggler are not undermined through the establishment of aggravating circumstances for migrant smuggling and related offences (art. 19 of the Smuggling of Migrants Protocol)</p> | <p>Legislative or other measures in place, subject to the basic concepts of the legal system, to establish as aggravating circumstances, those that (a) endanger or are likely to endanger the lives or safety of the migrants concerned; or (b) entail inhuman or degrading treatment, including for exploitation, of such migrants (art. 6, para. 3, of the Smuggling of Migrants Protocol)</p> <p>Legislative or other measures in place to establish violations of core human rights (including as aggravating circumstances those provided for in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture) (See table 2 (Protection), 6(a).E)</p> | <p>Publicize sanctions imposed to deter others from engaging in migrant smuggling and related conduct</p> <p>Put in place an independent mechanism to review imposed sanctions</p> <p>Review and enact or amend legislation or otherwise establish as aggravating circumstances, those circumstances that endanger or are likely to endanger the lives of migrants or that entail inhuman and degrading treatment, including exploitation</p> <p>Review and enact or amend legislation or otherwise establish as aggravating circumstances, those circumstances that endanger or are likely to endanger the lives of migrants or that entail inhuman and degrading treatment, including exploitation</p> | <p>Legislation in place allows consideration of aggravating (and mitigating) circumstances, either through parallel offences or provisions allowing more severe circumstances where there are aggravating circumstances</p> <p>Evidence that legislation is adequately broad in scope to encompass all practical situations of aggravation (or is revised where aggravating situations fall outside the scope of legislation) including human rights abuse</p> <p>Lists of aggravating circumstances are not exhaustive</p> <p>Evidence that situations of trafficking in persons and other crimes are identified in migrant smuggling situations and addressed appropriately</p> <p>Evidence that the cooperation of migrant smugglers with criminal justice process is considered a mitigating circumstance</p> |

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| | <p>Broadly define aggravating circumstances in legislation or otherwise to encompass a broad range of aggravating circumstances compliant with article 6, paragraph 3, of the Smuggling of Migrants Protocol, and including violations of human rights (International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention against Torture)</p> <p>Amend or revise any listed aggravating circumstances to ensure that such lists are non-exhaustive</p> <p>Where aggravating circumstances indicate potential trafficking in persons, apply legislative response in compliance with the Trafficking in Persons Protocol</p> <p>Where mandatory minimum punishments apply, consider mitigation for cases where offenders cooperate with the criminal justice process (art. 26 of the Organized Crime Convention)</p> | | | | |
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TABLE 2. PROTECTION (AND ASSISTANCE)

| A | B | C | D | E |
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| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| PROTECTION AND ASSISTANCE OF SMUGGLED MIGRANTS | | | | |
| 1 | To ensure international standards for protection and assistance of smuggled migrants, by fully respecting existing provisions of human rights law, humanitarian law and refugee law, in a way that does not discriminate against smuggled migrants (art. 16 and art. 19, para. 2, of the Protocol) | Ratification or accession to international and regional instruments on human rights and humanitarian law (art. 14 of the Organized Crime Convention) Interpretation and application of protection and assistance measures in a way that is consistent with internationally recognized principles of non-discrimination (art. 19, para. 2, of the Protocol) | Ratify or accede to international human rights instruments and implement at the national and regional levels Review and enact or amend protection and assistance legislation to address gaps with respect to existing legislation and the Organized Crime Convention and the Smuggling of Migrants Protocol and national needs in order to provide protection and assistance to smuggled migrants Review and enact or amend legislation to preserve and protect the basic rights of smuggled migrants in accordance with the Protocol Broaden the mandate of national human rights institutions and ombudspersons to monitor, promote and protect the rights of smuggled migrants | State is a party to relevant international and regional human rights law, international migration law, international refugee law and humanitarian law instruments Legislation and/or other measures to protect and assist smuggled migrants in compliance with the Protocol and relevant human rights instruments are in place and implemented Evidence that protection and assistance of smuggled migrants is based on respect for human rights, migration, refugee and humanitarian law and sensitivity to special needs and is not contingent on cooperation with the criminal justice process National human rights institutions and/or ombudspersons mandated to monitor, promote and protect the rights of smuggled migrants |

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| <p>2</p> <p>Consideration of special needs of women and children (art. 16, para. 4, of the Smuggling of Migrants Protocol)</p> | <p>To ensure that appropriate protection and assistance measures are in place to meet the special needs of smuggled migrants who are women and children (art. 16, para. 4, of the Smuggling of Migrants Protocol)</p> <p>To ensure that the rights of smuggled migrants who are children or women are protected without discrimination of any kind (art. 19, para. 2, of the Smuggling of Migrants Protocol; art. 2, para. 1, of the Convention on the Rights of the Child)</p> | <p>Ratification of or accession to international instruments including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights</p> <p>Best interests of the child are a primary consideration in all decisions concerning smuggled migrant children (art. 3 of the Convention on the Rights of the Child)</p> <p>Where appropriate, children are able to express their views and be heard in judicial or administrative proceedings affecting them (art. 12 of the Convention on the Rights of the Child)</p> | <p>Ratify or accede to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights</p> <p>Review and enact or amend migrant smuggling legislation to ensure child- and gender-sensitivity</p> <p>Review and enact or amend legislation and/or child care mechanisms to ensure that the best interest of the child is a core component in decision-making processes concerning children</p> <p>Review and enact or amend legislation and/or administrative practice to protect the right of children who are smuggled migrants to participate, provide adequate information to children and establish appropriate forums in which children can exercise their right to be heard (arts. 12 and 13 and art. 17, para. 2, of the Convention on the Rights of the Child)</p> <p>Build capacity of criminal justice and other relevant actors in applying child- and gender-sensitive approaches, which take into account specific vulnerabilities</p> <p>Commit adequate resources to protect the rights of smuggled migrants who are women and children</p> | <p>State is a party to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the International Covenant on Civil and Political Rights</p> <p>Child- and gender-sensitive legislation in place</p> <p>Legislation in place explicitly upholding best interests of the child applicable to smuggled migrants</p> <p>Evidence that children's right to be heard is protected in protection and assistance measures concerning smuggled migrant children</p> <p>Increased capacity of all relevant personnel in applying child- and gender-sensitive approaches</p> <p>Evidence of adequate resources including to support material assistance and other programmes provided to smuggled migrant women and children</p> |
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TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
|--|---|---|---|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| NON-DISCRIMINATION OF SMUGGLED MIGRANTS | | | | |
| 3 | To ensure that measures taken to address migrant smuggling do not result in discrimination on any of the prohibited grounds (art. 19, para. 2, of the Protocol) | <p>Measures taken to prevent and combat migrant smuggling are not discriminatory to smuggled migrants</p> <p>International human rights concerning non-discrimination are observed, to respect and ensure rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (art. 19, para. 2, of the Smuggling of Migrants Protocol; art. 2, para. 1; and art. 26 of the International Covenant on Civil and Political Rights; art. 2, para. 1, of the International Covenant on Economic, Social and Cultural Rights; art. 1 of the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; art. 7 of the Migrant Workers Convention; and art. 2 of the Convention on the Rights of the Child)</p> | <p>Review and enact or amend legislation to ensure that it is not discriminatory to smuggled migrants (art. 19, para. 2, of the Protocol)</p> <p>Strengthen the normative human rights framework affecting smuggled migrants and ensure that provisions are applied in a non-discriminatory manner (art. 19, para. 2, of the Smuggling of Migrants Protocol)</p> <p>Build capacity of criminal justice and other relevant actors in non-discrimination (art. 14, para. 2 (e), of the Smuggling of Migrants Protocol)</p> <p>Disseminate information about human rights of migrants to raise public and stakeholders' awareness as a means to promote respect for the dignity of migrants and counteract anti-migrant attitudes</p> <p>Amend mandate of anti-discrimination institutions to ensure they are mandated to monitor discrimination of smuggled migrants</p> <p>Promote independent monitoring and evaluation of treatment of smuggled migrants</p> | <p>Evidence that legislation is in no way discriminatory to smuggled migrants and that non-discrimination legislation applies to smuggled migrants</p> <p>Evidence that normative human rights framework is not discriminatory towards smuggled migrants and that any differential treatment of smuggled migrants based on their immigration status is pursuant to a legitimate aim and proportional to the achievement of the legitimate aim (art. 1, para. 4, of the International Convention on the Elimination of All Forms of Racial Discrimination, Committee on the Elimination of Racial Discrimination General Recommendation XXX on discrimination against non-citizens)</p> <p>Increased awareness and capacity of criminal justice and other relevant actors about non-discrimination</p> <p>Information publicly disseminated reduces discrimination against migrants</p> <p>Anti-discrimination institutions have mandate to monitor migrant smuggling</p> <p>Evidence of credible, independent monitoring and evaluation reports on State treatment of smuggled migrants</p> |

RIGHT TO LIFE AND RIGHT NOT TO BE SUBJECTED TO TORTURE OR OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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| <p>4</p> <p>Preservation and protection of the right to life of smuggled migrants (art. 16, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>To preserve and protect the lives of smuggled migrants whose lives or safety are endangered by reason of migrant smuggling (art. 16, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>Ratify or accede to international instruments protecting the right to life (art. 6, para. 1, of the International Covenant on Civil and Political Rights)</p> <p>The lives and safety of smuggled migrants not put in danger by State's own actions</p> | <p>Ratify or accede to international instruments protecting the right to life (International Covenant on Civil and Political Rights)</p> <p>Review and enact or amend legislation and/or other measures to preserve and protect lives of smuggled migrants whose lives are endangered</p> <p>Institute or amend operating procedures for State actors to actively preserve and protect lives and safety of smuggled migrants</p> <p>Facilitate independent monitoring and evaluation of right to life of smuggled migrants</p> <p>Take measures against State actors whose actions put in danger the lives or safety of smuggled migrants</p> | <p>State party to international instruments protecting the right to life</p> <p>Legislation and other measures in place to preserve and protect lives of smuggled migrants whose lives are endangered</p> <p>Operational procedures and guidelines for State actors in place result in steps taken to preserve and protect lives and safety of smuggled migrants</p> <p>Independent reports evidencing reduction in deaths of smuggled migrants as a result of smuggling process, against known deaths from same period in year before</p> <p>Evidence of investigations and prosecutions of State actors that have put in danger the lives or safety of smuggled migrants</p> |
| <p>5</p> <p>Preservation and protection of the right not to be subject to torture or other cruel, inhuman or degrading treatment or punishment (art. 16, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>To protect smuggled migrants from torture or other cruel, inhumane or degrading treatment or punishment (art. 16, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>Ratify or accede to international instruments prohibiting torture or other cruel, inhuman or degrading treatment or punishment (International Covenant on Civil and Political Rights and the Convention against Torture)</p> <p>Prohibition on torture incorporates full respect for the principle of non-refoulement (art. 3 of the Convention against Torture)</p> | <p>Ratify or accede to international instruments prohibiting torture or other cruel, inhuman or degrading treatment or punishment (the International Covenant on Civil and Political Rights and the Convention against Torture)</p> <p>Review and enact or amend legislation to protect smuggled migrants from torture, cruel, inhuman or degrading treatment or punishment and take measures to implement legislation</p> | <p>State is a party to international instruments prohibiting torture or other cruel, inhuman or degrading treatment or punishment</p> <p>Legislation protecting smuggled migrants from torture, cruel, inhuman or degrading treatment or punishment in place resulting in interceptions of migrants smuggling where conditions amount to torture or cruel, inhuman or degrading treatment, taking into consideration factors such as access to food, water, sleep, space and sanitary conditions</p> |

TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
|---------------------|---|---|---|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | | <p>Review and enact or amend legislation and/or put in place other measures to ensure that migrants are not returned to circumstances that could endanger their lives or amount to torture or cruel, inhuman or degrading treatment or punishment (art. 16, para. 1; art. 18, para. 7; art. 18, para. 8; and art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> <p>Involve international organizations and non-governmental organizations, civil society and other relevant actors in the design, implementation and monitoring of measures to protect smuggled migrants</p> <p>Build capacity of law enforcement and other relevant officials to protect smuggled migrants from torture or other cruel, inhumane or degrading treatment or punishment</p> <p>Fully implement the Convention against Torture by investigating and prosecuting cases of torture or ill treatment of migrants by State actors, including border control and immigration officials, including those who ordered such treatment</p> | <p>Legislation or other measures in place to ensure that migrants are not returned to circumstances that could amount to contravention of article 16, para. 1, of the Protocol</p> <p>Evidence that international organizations, non-governmental organizations and civil society actors are involved in design and implementation of measures to protect smuggled migrants from torture or other cruel, inhuman or degrading treatment, and in the provision of assistance to torture victims</p> <p>Increased capacity of law enforcement and other relevant officials in protecting smuggled migrants from torture or other cruel, inhumane or degrading treatment or punishment</p> <p>Investigations and prosecutions of State actors for committing torture or other cruel, inhuman or degrading treatment of smuggled migrants</p> |

PROTECTION AGAINST VIOLENCE

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| <p>6 Protection against violence (art. 16, para. 2, of the Smuggling of Migrants Protocol)</p> | <p>(a) To protect smuggled migrants from violence that may be inflicted upon them</p> | <p>Measures taken to protect smuggled migrants from violence that may be inflicted upon them, whether by individuals or groups, by reason of being smuggled</p> <p>Application of prohibition on violence to non-citizens regardless of status, including smuggled migrants (art. 16, para. 2, and art. 19, para. 2, of the Smuggling of Migrants Protocol)</p> | <p>Review and enact or amend legislation and/or take other measures to protect smuggled migrants against violence</p> <p>Identify migrants who may have experienced violence during the smuggling process</p> <p>Investigate allegations, prosecute and impose sanctions on acts of violence, threats or intimidation committed against smuggled migrants (art. 16, para. 2, of the Smuggling of Migrants Protocol; art. 68, para. 1 (c), of the Migrant Workers Convention)</p> <p>Remove barriers for migrants to access justice and lodge complaints against employers or other perpetrators of violence, without fear of intimidation or retaliation, regardless of their status, including by unlinking criminal procedures from immigration control mechanisms</p> <p>Remove barriers which prevent local service providers from supporting smuggled migrants who are victims of violence</p> <p>Provide smuggled migrants who have been victims of violence with access to justice, assistance and protection, including physical and mental health services (See table 2 (Protection), 14 and 15)</p> <p>Impose sanctions and treat as aggravating circumstances, acts of violence against smuggled migrants (See table 1 (Prosecution), 16)</p> | <p>Legislation in place protecting smuggled migrants from violence</p> <p>Increase in identification of migrants who have experienced violence during smuggling, investigations and prosecutions resulting from allegations of violence against smuggled migrants</p> <p>Evidence that smuggled migrants can report violence and lodge complaints against employers and other perpetrators of violence without fear of deportation or sanction for irregular migration</p> <p>Evidence that local service providers are not deterred from supporting smuggled migrants who are victims of violence</p> <p>Smuggled migrants who are victims of violence have access to justice, assistance and protection</p> <p>Evidence that sanctions are imposed for acts of violence committed against smuggled migrants and that acts of violence are treated as aggravating circumstances</p> |
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TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
|---------------------|--|--|--|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | (b) To protect smuggled migrants from violence that may be inflicted upon them, with special consideration for smuggled migrants who are women (art. 16, para. 4, of the Smuggling of Migrants Protocol) | Appropriate measures to afford smuggled migrants appropriate protection against violence, taking into account the special needs of women and girls by addressing underlying discriminatory norms and behaviours (art. 16, para. 4, art. 19, para. 2, of the Smuggling of Migrants Protocol) | Build capacity of service providers, medical professionals, law enforcement officials, members of the judiciary and policymakers to address gender-based violence inflicted on smuggled migrants Mandate national institutions and bodies concerned with gender-based violence, to address migrant smuggling issues Fully investigate all allegations of sexual abuse or other violence perpetrated against smuggled migrants by State and other actors and encourage victims to report such abuse Remove legal and structural barriers to access to assistance and protection services and legal proceedings for smuggled migrants who are women | National institutions and bodies mandated to address gender-based violence of all women regardless of their residence status Evidence that allegations of sexual abuse and other violence against smuggled migrants are investigated Reduced or removed barriers to protection and assistance services for smuggled migrants who are women, and evidence that protection and assistance services are provided |
| 7 | Provision of basic assistance to smuggled migrants whose lives or safety are endangered by having been the object of smuggling (art. 16, para. 3, of the Smuggling of Migrants Protocol) | (a) To ensure that persons endangered through being smuggled are provided with appropriate assistance , taking into account the special needs of women and children (art. 16, paras. 3 and 4, of the Smuggling of Migrants Protocol) | ASSISTANCE TO SMUGGLED MIGRANTS WHOSE LIVES AND SAFETY ARE ENDANGERED | |
| | | Legislation or other measures in place to ensure that basic assistance and physical security be provided to smuggled migrants whose lives or safety are endangered, in accordance with national standards on an equal basis with nationals and in an age- and gender-sensitive manner (art. 16 of the Smuggling of Migrants Protocol and art. 6, para. 1, of the International Covenant on Civil and Political Rights) | Review and enacting or amend legislation and strategies/action plans to provide basic assistance to smuggled migrants Allocate resources to support the provision of basic assistance to smuggled migrants whose lives are endangered, to ensure the State covers the full cost of assistance (so that smuggled migrants do not have to pay) | Legislation and other measures in place to provide basic assistance to smuggled migrants Adequate resources allocated to provide basic assistance to smuggled migrants, resulting in increased number of smuggled migrants assisted and/or rescued from danger |

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| | <p>(b) <i>To ensure the appropriate assistance provided to smuggled migrants includes urgently required medical adequate housing and education and the highest attainable standard of physical and mental health, on a non-discriminatory basis.</i></p> | <p>Urgently required medical care is available to smuggled migrants on a non-discriminatory basis (art 6, para. 1, and art. 7 of the International Covenant on Civil and Political Rights; art. 5, subparagraph. (e)(iv), of the International Convention on the Elimination of All Forms of Racial Discrimination; art. 12 of the International Covenant on Economic, Social and Cultural Rights; art. 24, para. 1, and arts. 25 and 39 of the Convention on the Rights of the Child; art. 12 of the Convention on the Elimination of All Forms of Discrimination against Women; art. 25 of the Convention on the Rights of Persons with Disabilities; and art. 28 of the Migrant Workers Convention)</p> | <p>Build capacity of criminal justice and other relevant actors (including medical and health-care workers, coastguard, border control and immigration officials) in assisting smuggled migrants</p> <p>Set an appropriate standard of conduct for officials who deal with smuggled migrants to deter conduct that puts the lives and safety of migrants in danger</p> <p>Investigate allegations of failure to assist smuggled migrants whose lives or safety are endangered</p> <p>Review and enact or amend legislation so that the provision of humanitarian assistance to smuggled migrants is not criminalized (See table 1 (Prosecution), 5.B)</p> <p>Take steps to provide urgently required medical care, access to health facilities, food, water and sanitation and other necessary goods and services including housing and education to smuggled migrants without discrimination</p> <p>Provide assistance, either in a form of direct provisions of food or through other measures such as provision of financial support, to enable smuggled migrants to have access to adequate and appropriate food without compromising their basic needs (Committee on Economic, Social and Cultural Rights General Comment No. 12)</p> | <p>Increased capacity of criminal justice and other relevant actors in providing basic assistance to smuggled migrants</p> <p>Appropriate standard of conduct in place for officials</p> <p>Increased number of investigations undertaken and sanctions imposed for failure to provide basic assistance to smuggled migrants whose lives are endangered</p> <p>Evidence that persons who provide humanitarian assistance to smuggled migrants are not criminalized</p> <p>Legislation and other measures in place to provide smuggled migrants with urgently required medical care, access to health facilities, food, water, sanitation and other necessary goods and services, and evidence of increased provision of such goods and services to smuggled migrants in detention</p> <p>Evidence that smuggled migrants provided with food or otherwise have access to food</p> <p>Increased number of smuggled migrant children enrolled in course of study or otherwise receiving education in the regular school system or otherwise</p> |
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TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
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| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | <p>Smuggled migrants are not refused by reason of any irregularity with regard to stay or employment (art. 28 of the Migrant Workers Convention)</p> <p>The right to adequate food is respected by ensuring smuggled migrants have access to adequate food (art. 11 of the International Covenant on Economic, Social and Cultural Rights; the Committee on Economic, Social and Cultural Rights Comment No. 12)</p> <p>Children of schooling age, particularly those of age of primary education, are ensured access to education (art. 13 of the International Covenant on Economic, Social and Cultural Rights; Committee on Economic, Social and Cultural Rights General Comment No. 13, art. 24 of the Convention on the Rights of the Child; and Committee on the Rights of the Child General Comment No. 6)</p> <p>The right to the highest attainable standard of physical and mental health is respected by refraining from denying or limiting equal access for all persons, including smuggled migrants, to preventive, curative and palliative health services, on a non-discriminatory basis (art. 12 of the International Covenant on Economic, Social and</p> | <p>Adopt measures to ensure that smuggled children have access to primary education and, to the extent possible, to other educational levels, by facilitating their attendance to regular schools or by providing proper educational arrangements (art. 13 of the International Covenant on Economic, Social and Cultural Rights, Committee on Economic, Social and Cultural Rights General Comment No. 13; art. 24 of the Convention on the Rights of the Child, Committee on the Rights of the Child General Comment No. 6)</p> <p>Take measures to ensure accountability of those who are responsible for delivery of services, including health workers</p> <p>Ensure that national health legislation, policies, strategies/ plans of action take into account the health of smuggled migrants.</p> <p>Take measures to ensure health services are provided based on the principle of non-discrimination on any grounds, including in detention facilities</p> | <p>Evidence that State actors responsible for delivery of goods and services to smuggled migrants are held accountable for failure to provide goods and services</p> <p>Health services are non-discriminatory and are provided to smuggled migrants in detention</p> <p>Evidence that epidemic and endemic diseases are controlled among smuggled migrants</p> |

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| | | <p>Cultural Rights; Committee on Economic, Social and Cultural Rights General Comment No. 14; art. 2, para 1, and art. 26 of the International Covenant on Civil and Political Rights; art. 2, para. 1, of the International Covenant on Economic, Social and Cultural Rights; art. 1 of the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women; art. 7 of the Migrant Workers Convention; and art. 2 of the Convention on the Rights of the Child)</p> | <p>Prevent and control diseases among smuggled migrant populations, including in detention</p> <p>Implement measures to provide urgently required medical care and health assistance in the area of sexual violence and rape, and sexually transmitted diseases, including prophylaxis, when required</p> <p>Train medical and health-care workers in issues related to sexually transmitted diseases, including HIV and AIDS, and in relation to sexual violence and rape</p> <p>Provide smuggled migrants with information that is accessible and in an adequate language and format on public health issues, prevention, treatment and control of diseases, health services available to them and sexual and reproductive health, including the preventative measures</p> | <p>Urgently required medical care and health assistance is provided to smuggled migrants, including in areas of sexual violence and rape, sexually transmitted diseases including prophylaxis</p> <p>Medical and health-care workers are trained in issues related to sexually transmitted diseases including HIV and AIDS, and in relation to sexual violence and rape</p> <p>Evidence that smuggled migrants are provided with information that is accessible and in an adequate language and format on public health issues, prevention, treatment and control of diseases and available health services</p> |
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COMPLIANCE WITH INTERNATIONAL OBLIGATIONS IN SITUATIONS OF DETENTION

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| <p>8</p> <p>Non-interference of the Smuggling of Migrants Protocol with other rights, obligations and responsibilities of States and individuals under international law including human rights, humanitarian and refugee law (art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> <p>Compliance with the Vienna Convention on Consular Relations where smuggled migrants are detained (art. 16, para. 5, of the Smuggling of Migrants Protocol)</p> | <p>(a) To ensure that detention is resorted to only exceptionally and as a measure of last resort, and is not arbitrary or indefinite.</p> <p>Where a person is to be subject to detention, alternatives to detention must first be pursued.</p> <p>Detention must be for the shortest possible period, reviewable and deemed necessary and proportionate to the objective of identity and security checks, prevention of absconding or compliance with an expulsion order, to</p> | <p>Alternatives to detention explored in the first instance</p> <p>Detention used as last resort and only in compliance with international human rights and humanitarian law standards and obligations (arts. 9 and 10 of the International Covenant on Civil and Political Rights)</p> | <p>Review and enact or amend legislation as necessary to ensure that smuggled migrants can be detained only in exceptional situations (which are reasonable and proportionate)</p> <p>Review and enact or amend legislation to determine grounds on which a migrant can be detained and the period of their detention and inform detainees of the reason for and duration of their detention</p> | <p>Legislation concerning detention in place, allowing detention of smuggled migrants only as last resort</p> <p>Evidence that detention of smuggled migrants only occurs where it is necessary, reasonable and proportionate, and for the shortest possible time with defined limits on their length of their detention</p> |
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TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
|---------------------|--|--|---|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | <p>protect national security or public order (the Smuggling of Migrants Protocol, the Universal Declaration of Human Rights, the Refugee Convention, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and its Optional Protocol, the UNHCR Revised Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers, UNHCR Executive Committee Conclusion No. 44 (1986) and the Migrant Workers Convention)</p> | <p>Restrictions on freedom of movement only such grounds and procedures established by law (freedom from arbitrary detention) (art. 9 of the International Covenant on Civil and Political Rights; art. 40, para. 1, of the Convention on the Rights of the Child; and art. 16, para. 4, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families)</p> <p>As a general principle, vulnerable individuals including refugees, children, pregnant women, nursing mothers, survivors of torture and trauma, human trafficking victims, elderly persons, the disabled or those with physical or mental health needs, should not be detained</p> <p>Detention of refugees and asylum-seekers may exceptionally be resorted to for a few reasons, including verification of identity and determination of the elements on which the claim for refugee status or asylum is based (art. 31, para. 2, of the Refugee Convention)</p> <p>Right to due process (art. 9, para. 4, of the International Covenant on Civil and Political Rights)</p> | <p>Identify vulnerable persons so as not to detain them</p> <p>Put in place effective and efficient mechanism for smuggled migrants to challenge their detention through judicial review of detention decisions, allowing detainees to challenge the legality of their detention before court or competent authority, including right to legal counsel and power of the court to release and prompt decision</p> <p>Implement mechanism for non-custodial alternatives to detention and consider abolishing administrative detention of migrants (Special Rapporteur on Torture 2001, para 39, IDC)</p> | <p>Evidence that vulnerable persons are identified and not detained</p> <p>Evidence that smuggled migrants can challenge their detention through judicial review, and have right to legal counsel</p> <p>Evidence that alternative non-custodial measures used to avoid detaining vulnerable persons, such as shelters or other appropriate accommodation are in place</p> |

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| | <p>(b) To ensure that when detention occurs, it is in accordance with international standards, rights, obligations and responsibilities under international law, including human rights, humanitarian and refugee law (art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> <p>To ensure that smuggled migrants in detention have the right to consular assistance (art. 16, para. 5, of the Smuggling of Migrants Protocol)</p> | <p>Conditions of detention must comply with basic minimum human rights standards (art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> <p>To ensure that smuggled migrants deprived of their liberty have the opportunity to seek asylum and to access asylum (Refugee Convention)</p> <p>Compliance with the obligation under the Vienna Convention on Consular Relations to inform the person of the notification and communication obligations under that Convention (art. 16, para. 5, of the Smuggling of Migrants Protocol)</p> | <p>Ratify or accede to the Optional Protocol to the Convention against Torture, as a legal basis for regular and independent monitoring of places of detention</p> <p>Provide detainees with suitable means for sleeping, suitably-equipped sanitary and washing facilities, opportunities for exercise in the open, appropriate food, medical care and other basic necessities</p> <p>Do not detain smuggled migrants in prisons or with remanded or convicted prisoners</p> <p>Facilitate access to mail and parcels and visits, in private, from international organizations, non-governmental organizations, civil society and other relevant actors</p> <p>Inform smuggled migrants in detention without delay about their right to communicate with consular officers in a form and language they understand in a confidential setting (art. 16, para. 5, of the Smuggling of Migrants Protocol; art. 16, para. 7, of the Migrant Workers Convention; and art. 36 of the Vienna Convention on Consular Relations), and provide those smuggled migrants who wish to exercise their right with the means to communicate with consular officers</p> <p>Inform smuggled migrants of the risks associated with communicating with their consular officers where asylum is sought</p> <p>Allocate resources and build capacity of consular authorities</p> <p>Investigate and prosecute, as appropriate, allegations of abuse of migrants in detention</p> | <p>State is a party to the Optional Protocol to the Convention against Torture</p> <p>Conditions of detention are in accordance with international standards</p> <p>Evidence of independent monitoring and evaluation reports confirming that persons are not detained in prisons or otherwise convicted prisoners</p> <p>Evidence that smuggled migrants in detention receive mail, parcels and private visits by international organizations, non-governmental organizations, civil society and other relevant actors</p> <p>Reports of independent observers on the proportion of detained smuggled migrants informed of their right, in a form and language they understand and provided with means to communicate with consular officers and evidence that detained smuggled migrants are aware of their right to communicate with consular officers</p> <p>Evidence that smuggled migrants are informed about the risks associated with communicating with their consular officers and that consular officials are not contacted without explicit consent of smuggled migrants</p> <p>Increased resources available and capacity of consular authorities to address migrant smuggling</p> <p>Evidence of prosecutions of persons who abuse smuggled migrants in detention</p> |
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TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
|---------------------|---|--|---|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | <p>(c) To ensure that gender considerations are mainstreamed into detention decisions and conditions</p> <p>To ensure that the special needs of children are considered in decisions concerning detention, in accordance with international standards (art. 16, para. 4, of the Smuggling of Migrants Protocol and art. 3 of the Convention on the Rights of the Child)</p> | <p>Identify and ensure the protection of women and girls, including those who have experienced or are at risk of sexual and gender-based violence</p> <p>Presumption against detention of children in place, such that where detention is exceptionally justified alternatives to detention are explored in the first instance</p> <p>Where smuggled migrant children are exceptionally detained or otherwise deprived of their liberty, they are treated in a manner that takes their age specific needs into consideration, and are separated from adults unless it is in the child's best interest not to do so, and have the right to maintain contact with the family through correspondence and visits, save in exceptional circumstances (art. 37, subpara. (c), of the Convention on the Rights of the Child)</p> <p>Uphold the principle of family unity in ways that do not contemplate detention of migrant children (art. 3, para. 2; and arts. 8-10 and 18 of the Convention on the Rights of the Child; arts. 18 and 23 of the International Covenant on Civil and Political Rights; art. 10 of the International Covenant on Economic, Social and Cultural Rights; and arts. 12 and 44 of the Migrant Workers Convention)</p> | <p>Review and enact or amend legislation requiring consideration of least restrictive alternatives to detention (e.g. community-based/casework-oriented models)</p> <p>Adopt legislative or other measures to ensure child- and gender-sensitive screening, ensuring female detainees have access to female staff</p> <p>Secure the immediate release of, and alternative accommodation and care arrangements for, detained women and children who are at heightened risk, including pregnant women, unaccompanied and separated children, and survivors of sexual and gender-based violence</p> <p>In cooperation with partners, establish mechanisms to help individuals of concern who are detained to gain access to legal remedies, education, health care and psychosocial support</p> <p>Undertake best interest determination for all smuggled children affected by detention, and in any decision to detain or separate children from their families</p> <p>Independent monitoring to ensure child- and gender-appropriate detention or other accommodation arrangements</p> | <p>Evidence that alternatives to detention have been established in law and are non-discriminatory in purpose and effect and are subject to judicial review</p> <p>Evidence of gender-sensitive screening and an appropriate number of female staff in relation to the number of female detainees</p> <p>Evidence that vulnerable women and children are released from detention and are alternatively accommodated or cared for, in relation to the number of vulnerable persons in detention</p> <p>Effective mechanisms are in place to enable individuals of concern to access legal remedies, education, health care and psychosocial support, resulting in the highest attainable standard of health for smuggled migrants in detention</p> <p>Evidence that detention decisions affecting children are subject to best interest determination</p> <p>Evidence of independent findings that living quarters or facilities used to detain children are suitable for children and meet the special needs of women</p> |

COMPLIANCE WITH INTERNATIONAL OBLIGATIONS IN SITUATIONS OF RETURN

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| <p>9</p> <p>Return of smuggled migrants who have no entitlement to remain in the country (art. 18 of the Smuggling of Migrants Protocol)</p> | <p>(a) To ensure that return, when it occurs, is carried out in an orderly manner and with due regard for the safety and dignity of the person (art. 18, para. 5, of the Smuggling of Migrants Protocol)</p> | <p>Implementation of return of smuggled migrants does not affect any other obligations, agreements or arrangements concerning return (art. 18, para. 8, of the Smuggling of Migrants Protocol)</p> <p>Measures taken to respect and protect human rights of smuggled migrants upon return in order to secure the safety and dignity of the person, including the right to education, food, health, housing, life, social security and social protection and work (the International Covenant on Economic, Social and Cultural Rights; the International Covenant on Civil and Political Rights; art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> <p>(See table 4 (Cooperation), 20.B)</p> | <p>Review and enact or amend legislation as necessary to ensure that return procedures carried out in accordance with article 18 of the Smuggling of Migrants Protocol</p> <p>Promote voluntary return in preference to forced return by encouraging and assisting those who do not qualify for humanitarian protection to return to their country of origin in humane and safe conditions</p> <p>In cases of voluntary return, consider the possibility of suspending ban on re-entry</p> <p>Build capacity of officials involved in return in respect to humane treatment and respecting rights of smuggled migrants (art. 14, para. 1, of the Smuggling of Migrants Protocol)</p> <p>Provide adequate resources to officials for purposes of effecting return</p> <p>Consider providing reintegration assistance for smuggled migrants, including social and labour reinsertion</p> <p>Establish and support independent mechanism to monitor return</p> <p>Impose sanctions on officials who violate human rights of smuggled migrants in the course of effecting return</p> | <p>Legislation and policies governing return in place in compliance with article 18 of the Smuggling of Migrants Protocol and international law</p> <p>Increased number of voluntary returns and decreased number of forced returns carried out</p> <p>Evidence of suspension of ban on re-entry in cases of voluntary return</p> <p>Increased capacity of officials in humane treatment in return</p> <p>Evidence of adequate resources allocated to officials for purposes of effecting return</p> <p>Evidence of resources and projects developed for social and labour reintegration of return migrants, including increased involvement of authorities in receiving countries in supporting reintegration of returnees</p> <p>Independent monitoring mechanism in place reporting on return procedures</p> <p>Evidence that appropriate sanctions imposed on officials who violate human rights of smuggled migrants in the course of effecting return</p> |
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TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
|---------------------|---|---|--|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | <p>(b) To ensure that return of smuggled migrants is not tantamount to refoulement (art. 19, para. 1, of the Smuggling of Migrants Protocol; art. 31 of the Refugee Convention)</p> <p>To ensure that return does not prejudice the rights of smuggled migrants under international law including human rights, humanitarian and refugee law (art. 18, para. 7, and art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>Return is not tantamount to refoulement (art. 3 of the Convention against Torture; art. 13 of the International Covenant on Civil and Political Rights; and art. 13 of the Refugee Convention)</p> <p>Implementation of return of smuggled migrants carried out without prejudice to their rights (art. 18, para. 7, of the Smuggling of Migrants Protocol)</p> <p>Prohibition of collective return respected (art. 3 of the Convention against Torture, art. 22 of the Migrant Workers Convention; art. 19 of the International Covenant on Economic, Social and Cultural Rights; art. 4 of Protocol No. 4 to the European Convention on Human Rights)</p> <p>Procedural guarantees and the right to an effective legal remedy in place in effecting return (art. 3 of the Convention against Torture; art. 13 of the International Covenant on Civil and Political Rights)</p> | <p>Review and enact or amend legislation to explicitly prohibit refoulement</p> <p>Review and enact or amend legislation to prohibit collective return</p> <p>Grant right to appeal against decisions related to return before a competent judicial or administrative authority or a competent independent body, as well as free legal representation and assistance</p> <p>Only carry out a return subject to individual risk assessment</p> <p>Adopt policy positions and impose sanctions on officials who accompany irregular migrants directly to border without registering their presence</p> <p>Promote independent monitoring and evaluation of return procedures to ensure that refoulement has not occurred</p> | <p>Refoulement explicitly prohibited in domestic legislation</p> <p>Evidence that collective return has not occurred</p> <p>Right to appeal against decisions related to return protected</p> <p>Individual risk assessments carried out prior to return being affected</p> <p>Policy positions adopted and sanctions imposed on officials who return smuggled migrants prior to registering their presence</p> <p>Evidence of studies and reports by independent actors of return policies, testimonies of smuggled migrants, that refoulement has not occurred and that return has been conducted in accordance with international standards</p> |
| | <p>(c) To ensure that the special needs of children are considered in decisions concerning return (art. 18, para. 5, of the Smuggling of Migrants Protocol)</p> | <p>Return carried out only where in the best interests of the child and where there are no substantial grounds for believing that there is a real risk of irreparable harm to the child</p> | <p>Put in place an effective mechanism to formally determine the child's best interests before any return decision, in accordance with UNHCR guidelines on formal best interest determinations and Committee on the Rights of the Child's General Comment No. 6</p> | <p>Evidence that formal determinations made in accordance with UNHCR guidelines on the best interest of the children in respect of return</p> <p>Evidence that children are returned to safe, adequate and child-appropriate facilities</p> |

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| | | <p>In carrying out return, children are not separated from their parents against their will, except where competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is in the best interests of the child (art. 19, para. 1, of the Convention on the Rights of the Child)</p> | <p>Only return children where there are safe, adequate and child-appropriate facilities to receive them</p> <p>Refrain from returning a child to the borders of a State where there is a real risk of underage recruitment, as a combatant or to provide sexual services for the military, or where there is a real risk of direct or indirect participation in hostilities (art. 38 of the Convention on the Rights of the Child and arts. 3 and 4 of the Optional Protocol to the Convention on the Rights of the Child)</p> <p>Carry out thorough and individualized analysis of whether repatriation would place the child at risk of having his or her fundamental rights violated or being exposed to persecution or abuse targeting the child or family</p> | <p>Evidence that children are not returned to countries where substantial grounds for believing that there is a real risk of irreparable harm to the child</p> <p>Evidence that return decisions concerning each individual child have been analysed in accordance with the best interests of the child and that alternatives to return are in the best interests of the child</p> |
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COMPLIANCE WITH INTERNATIONAL OBLIGATIONS IN BORDER CONTROL

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| <p>10</p> <p>To ensure that border control measures do not undermine obligations under international law, including human rights, humanitarian and refugee law (art. 19 of the Smuggling of Migrants Protocol)</p> | <p>To ensure that entry and exit border control measures do not affect rights, obligations and responsibilities of States and individuals under international law, including human rights, humanitarian and refugee law (art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>Border control measures do not prejudice free movement of people nor undermine refugee protection</p> | <p>Put in place referral mechanism to ensure border and immigration officials can refer smuggled migrants in need of protection and assistance</p> <p>Establish monitoring agreements allowing intergovernmental organizations and non-governmental organizations that are partners to visit borders on ongoing and regular basis</p> | <p>Evidence that border control operational plans and strategies include practical measures to identify and refer individuals in need of protection resulting in persons potentially in need of protection identified and appropriately referred</p> <p>Evidence of independent monitoring bodies granted ongoing access to borders</p> |
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TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
|---------------------|---|---|---|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | <p>Border control measures observe prohibitions on refoulement (art. 33 of the Refugee Convention) and do not prevent a person leaving the place in which they fear persecution or other forms of violence (art. 12, para. 2, of the International Covenant on Civil and Political Rights, UNHCR “Refugee protection and mixed migration: a 10-point plan of action”, also see e.g. art. 3 (b)) (See table 2 (Protection), 12.C, 13.C, 9(b).B)</p> <p>Procedures governing entry and stay of non-nationals are non-discriminatory (art. 19, para. 2, of the Smuggling of Migrants Protocol)</p> | <p>Implement mechanisms to receive asylum requests at borders and ensure admission to territory for purpose of accessing asylum procedure</p> <p>Provide instructions to and build capacity of border/immigration officials and others on responding to situations that may fall within the scope of the Refugee Convention</p> <p>Make information concerning number of individuals granted access to asylum procedure publicly available and promote public discourse on reconciling border control with refugee protection needs</p> <p>Promote cooperation between border officers, law enforcement, intergovernmental organizations, non-governmental organizations and other relevant actors</p> <p>Promote independent monitoring and evaluation of the human cost of border control policies</p> <p>Implement fair and non-discriminatory entry and exit procedures</p> | <p>Mechanisms in place to receive asylum requests at borders and grant access to territory to access asylum procedure</p> <p>Increased capacity of border/immigration officials in respect of the Refugee Convention</p> <p>Evidence that publicly available information results in increased public discourse about reconciling border controls with refugee protection needs</p> <p>Increased cooperation between border officers, law enforcement, intergovernmental organizations, non-governmental organizations and other relevant actors</p> <p>Evidence that entry and exit procedures in place are non-discriminatory</p> |

PROTECTION AND ASSISTANCE OF SMUGGLED MIGRANTS AT SEA

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| <p>11</p> <p>Relief of imminent danger to the lives of persons at sea (art. 8, para. 5, of the Smuggling of Migrants Protocol)</p> | <p>(a) To ensure that persons in distress at sea are rescued and assisted</p> | <p>Duty of rescue at sea in international law of the sea is upheld (art. 18, para. 2; art. 39, para. 1 (c); arts. 45, 52 and 54; art. 58, paras. 2 and 3; and art. 98 of the Convention on the Law of the Sea), regardless of whether there is suspicion of migrant smuggling or not (art. 8, para. 5; and art. 9, para. 1, of the of the Smuggling of Migrants Protocol; the Convention on the Law of the Sea, the Safety of Life at Sea Convention and the Search and Rescue Convention)</p> | <p>Review and enact or amend legislation requiring shipmasters and officials to render assistance to those in distress at sea and deliver them to a place of safety (the Search and Rescue Convention, art. 98, paras. 1 and 2, of the Convention on the Law of the Sea and the Safety of Life at Sea Convention)</p> <p>Establish, operate and maintain adequate and effective search and rescue services regarding safety at sea (art. 98, para. 2, of the Convention on the Law of the Sea)</p> <p>Equip Government vessels likely to encounter persons in distress at sea with adequate rescue apparatus</p> <p>Disseminate to shipmasters, Government officials and others as necessary who may be involved in rescue at sea operations, relevant provisions of maritime law and accompanying guidelines</p> <p>Support and assist other States in establishing functioning, sustainable search and rescue facilities</p> <p>Undertake necessary monitoring, communication and operational measures and reach agreements to ensure rescue at sea near the coast (the Safety of Life at Sea Convention, annex Charter V regulation 7, para. 1)</p> <p>Consider use of data recording instruments in vessels so intentional failure to rescue can be proven</p> | <p>Legislation in place governing rescue at sea in compliance with international law, including international human rights and refugee law, resulting in increased measures taken to relieve imminent danger to lives irrespective of express authorization of flag State</p> <p>Search and rescue services for sea in place</p> <p>Government vessels likely to encounter persons in distress are adequately equipped with apparatus to carry out rescue and assist, evidenced by an increased number of persons rescued at sea provided with urgent medical or other assistance and delivered to a place of safety</p> <p>Evidence that maritime law and accompanying guidelines disseminated, resulting in increased awareness and capacity</p> <p>Evidence that financial, technical and other support provided to other States resulting in increased search and rescue capacity</p> <p>Evidence of monitoring, communication, operational measures, agreements and arrangements in place to ensure rescue at sea</p> <p>Evidence that data recording instruments used in vessels to show intentional failure to rescue, resulting in increased sanctions for failure to rescue</p> |
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TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
|---------------------|--|---|---|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | (b) To ensure that implementation of the of the Smuggling of Migrants Protocol does not deter actors from rescuing persons in distress at sea, regardless of whether migrant smuggling is suspected of taking place | Persons who effect rescue at sea are not held liable for migrant smuggling | Enact or implement legislation to ensure that those who rescue smuggled migrants at sea and transport them to a safe place are not liable for migrant smuggling Consider providing financial support for private vessel owners who conduct rescue at sea | Evidence that those who effect rescue at sea and transport migrants to a safe place are not held liable for migrant smuggling Increased financial support provided to vessel owners who conduct rescue at sea |
| 12 | Ensure the safety and humane treatment of persons on board vessels which measures have been taken against in accordance with article 8 (art. 9, para. 1 (a), of the Smuggling of Migrants Protocol) To ensure that measures taken in accordance with article 8 do not affect rights, obligations and responsibilities under international law, including international human rights, humanitarian and refugee law (art. 9 and art. 19, para. 1, of the Smuggling of Migrants Protocol) | Legislation in place requiring officials to effect rescue regardless of whether or not there is suspicion of migrant smuggling (art. 9, para. 1, of the Smuggling of Migrants Protocol) Legislation in place to ensure the safety and humane treatment of migrants smuggled by sea where measures have been taken against vessels in accordance with article 8 of the Protocol (art. 9, para. 1, of the Smuggling of Migrants Protocol) Prohibitions on refoulement are upheld on high seas and territorial seas (art. 22, para. 1, of the Refugee Convention; art. 3, para. 1, of the Convention against Torture; arts. 6 and 7, of the International Covenant on Civil and Political Rights; and art. 19, para. 1, of the Smuggling of Migrants Protocol) | Review and enact or amend legislation requiring officials to effect rescue at sea, whether or not there is suspicion of migrant smuggling Adequately equip reception centres to receive intercepted smuggled migrants and allow international organizations, non-governmental organizations, civil society and others access to centres Issue guidelines on States' responsibilities concerning interceptions at sea and disseminate along with good practices for identification of refugees arriving by sea, and the International Maritime Organization Guidelines on the Treatment of Persons Rescued at Sea Cease interdicting and summarily returning vessels to countries where migrants' life and liberty are threatened | Legislation in place requiring officials to carry out rescue at sea in accordance with the of the Smuggling of Migrants Protocol and international law including human rights and refugee law Reception centres are adequate to cater for migrants rescued at sea, evidenced by independent reports of international organizations, non-governmental organizations, civil society and other relevant actors Evidence that guidelines (including International Maritime Organization guidelines) disseminated, resulting in increased awareness of obligations and evidence that treatment of persons rescued at sea is in accordance with guidelines including IMO guidelines |

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| | | | Disembarkation of intercepted smuggled migrants at nearest port of disembarkation on dry land does not lead to refoulement (chain refoulement) | Transfer intercepted migrants to nearest port of disembarkation on dry land and process asylum seekers on dry land after disembarkation and not on board vessels Investigate allegations of inappropriate use of force on persons on board vessels and prosecute as necessary | Vessels are not returned where lives or safety of occupants are endangered, including where tantamount to refoulement and summary return of vessels to countries where lives and liberty threatened has ceased, evidenced by individual decisions in respect of return independent examined and reviewed Increased resources available to process smuggled migrants and asylum-seekers on dry land resulting in increased processing on dry land Increased investigations of inappropriate force against number of allegations made, resulting in increased prosecutions |
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PROTECTION OF SMUGGLED REFUGEES OR ASYLUM-SEEKERS

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| 13 | Non-interference with other rights, obligations of States and individuals under international law, through implementation of the Migrants Protocol (art. 19 of the Protocol) | (a) To ensure that implementation of the Smuggling of Migrants Protocol does not detract from existing protections afforded by international law to migrants who are refugees or asylum-seekers (art. 19, para. 1, of the Protocol) | Ratification or accession to the Refugee Convention and its 1967 Protocol Asylum procedure in place Smuggled persons have access to asylum procedure The Smuggling of Migrants Protocol is interpreted in a way that is not discriminatory to persons on the ground that they are smuggled (art. 19, para. 2) Full respect for the principle of non-refoulement (art. 33 of the Refugee Convention) | Review and enact or amend asylum law; establish a fair and lawful asylum procedure in conformity with international standards and obligations, in particular, absolutely prohibiting refoulement in domestic law, including chain refoulement Review and enact or amend legislation to prohibit the fact of having been smuggled from being considered in determining an asylum claim where persons present themselves without delay to authorities and show good cause for their illegal entry or presence (art. 31 of Refugee Convention) | State is a party to the Refugee Convention and its 1967 Protocol Refoulement explicitly prohibited in domestic law, resulting non-refoulement including evidence that return does not take place to a country from where a person would be subject to refoulement (chain refoulement) Evidence that the fact of having been smuggled is not taken into consideration in determining asylum claims Referral system in place and efficiency of referrals, resulting in increased number of smuggled persons who have claimed asylum to be referred to UNHCR or other refugee protection and asylum actors |
|----|---|--|---|--|--|

TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
|---------------------|--|---|---|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | <p>(b) To ensure that implementation of the of the Smuggling of Migrants Protocol does not detract from existing protections afforded by international law to smuggled migrant children who are refugees or asylum seekers (art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>Smuggled migrants who are children have access to the asylum procedure</p> <p>Full respect for the principle of non-refoulement (art. 33 of the Refugee Convention and art. 3 of the Convention against Torture)</p> | <p>Put in place a referral system to ensure that smuggled persons who claim asylum have access to asylum procedure</p> <p>Build capacities of relevant personnel for the appropriate treatment of smuggled migrants who are refugees or asylum-seekers</p> <p>Seek international assistance to address resource constraints in capacity-building</p> <p>Provide smuggled migrants who are children with access to effective child-friendly procedures to establish risk of refoulement</p> <p>Appoint a guardian and legal representative for unaccompanied or separated children before referral to the asylum procedure</p> <p>When assessing an individual child's claim for refugee status, take into account: (a) the child's age and views, noting in particular the need for expert assessment; (b) the appointment of a legal representative as well as a guardian to promote a decision that will be in the child's best interests; and (c) a recognition that the child should be given the benefit of the doubt should there be some concern regarding the credibility of his or her story</p> | <p>Increased capacity of relevant personnel to treat asylum seekers and refugees in accordance with the Refugee Convention</p> <p>Evidence that international assistance is sought to address resource constraints in capacity-building</p> <p>Evidence that children have access to child-friendly asylum procedures and that their asylum claims are not jeopardized by virtue of having been smuggled or by virtue of being a child</p> <p>Evidence that guardians and legal representatives appointed to unaccompanied or separated children as necessary</p> <p>Increased efficiency of asylum claims made by smuggled migrant children, in accordance with international standards</p> |

PROTECTION AND ASSISTANCE OF SMUGGLED MIGRANTS WHO ARE VICTIMS/WITNESSES OF CRIME (INCLUDING TRAFFICKING IN PERSONS)

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| <p>14</p> | <p>Provision of effective assistance to and protection of smuggled migrants who are victims of crime and their families (art. 25 of the Organized Crime Convention)</p> | <p>To protect and assist persons who are victims of crime (from potential retaliation or intimidation)</p> <p>To allow smuggled migrants who have been victims of crime the possibility of obtaining compensation for damage suffered</p> <p>To increase chances of achieving prosecution of migrant smugglers by supporting the participation of victims in the criminal justice process</p> <p>To ensure that the fact of having been smuggled does not undermine a persons' access to protection and assistance (art. 19, para. 2, of the Smuggling of Migrants Protocol)</p> | <p>Appropriate legislation, policy measures, criminal justice procedures and other necessary measures in place within available means, to ensure the physical safety of smuggled migrants who are victims of crime</p> <p>Legislation enabling smuggled migrants who have become victims of crime to claim compensation in place</p> | <p>On the basis of risk assessments, take appropriate measures to provide assistance and protection to persons who are victims of crime and their families, such as relocation and permitting limitations on disclosure of information about identity or whereabouts, in particular in cases of threat of retaliation or intimidation (art. 25, para. 1, of the Organized Crime Convention)</p> <p>Provide smuggled migrants who are victims of crime with access to legal aid</p> <p>Build awareness and capacity among criminal justice and other relevant actors of their responsibility to ensure safety of victims and their families</p> <p>Put in place child-appropriate measures where victims are children</p> <p>Establish appropriate procedures to provide access to compensation and restitution of victims of crime</p> | <p>Evidence that legal and other measures preventing threat or intimidation of victims taken on the basis of risks assessments and result in effective protection of victims of crime</p> <p>Increase in smuggled migrants who are victims of crime to be provided with legal aid</p> <p>Increase capacity of criminal justice and other relevant actors in victim protection</p> <p>Evidence that child-appropriate measures are in place where victims are children</p> <p>Increase in number of smuggled migrants who are victims of crime who have access to compensation and restitution</p> |
| <p>15</p> | <p>Provision of effective assistance to and protection of smuggled migrants who are witnesses of crime and their families (art. 24 of the Organized Crime Convention)</p> | <p>To protect and assist persons who are witnesses of crime (from potential retaliation or intimidation)</p> <p>To strengthen criminal justice response to migrant smuggling by supporting the participation of witnesses in criminal justice proceedings</p> | <p>Appropriate legislation, policy measures, criminal justice procedures and measures as necessary to ensure the physical safety of smuggled migrants who are witnesses in criminal proceedings</p> <p>Appropriate measures in place to enable witnesses of migrant smuggling to participate in criminal justice proceedings</p> | <p>Review and enact or amend witnesses protection legislation, in particular concerning physical protection, to ensure application to smuggled migrants and to provide sanctions for threatening or intimidating a witness</p> | <p>Witness protection legislation applicable to smuggled migrants, compliant with article 24 the Organized Crime Convention</p> <p>Legislative or other measures in place to provide incentive for smuggled migrants to testify against smugglers, resulting in increased testimony and prosecutions</p> |

TABLE 2. PROTECTION (AND ASSISTANCE) (Continued)

| A | B | C | D | E |
|---------------------|---|---|--|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | | <p>Take legislative or other measures to provide witnesses of migrant smuggling with incentives to testify against smugglers, for instance, by removing fear of deportation</p> <p>Review and enact or amend</p> <p>Put in place evidentiary rules to permit witness testimony to be given in a manner that ensures safety of witnesses, including for instance, through video link, recorded testimony and closed trial, without prejudice to the rights of defendants</p> <p>Build capacity among law enforcement and other relevant actors to protect witnesses and their families</p> <p>Commit adequate and sustainable financial, technical and other resources to witness protection programmes in respect of migrant smuggling</p> <p>Provide opportunities for witnesses to present views and concerns at appropriate stage of criminal proceedings, subject to domestic law</p> <p>Put in place child-specific measures where witnesses are children</p> | <p>Evidentiary rules in place and utilized to support smuggled migrants to give testimony in a safe way, resulting in increased safe testimony, without prejudicing defendants' rights</p> <p>Increased capacity of law enforcers and other actors to protect witnesses and their families</p> <p>Adequate and sustainable technical, financial and other resources available to protect witnesses of migrant smuggling</p> <p>Increased willingness on the part of witnesses to come forward to authorities and communicate their concerns, resulting in increased witness safety</p> <p>Evidence that child-appropriate measures are in place where witnesses are children</p> |

SPECIAL CONSIDERATIONS IN PROTECTING AND ASSISTING SMUGGLED MIGRANTS WHO ARE UNACCOMPANIED OR SEPARATED CHILDREN

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| 16 | <p>Consideration of special needs of children (art. 16, para. 4, of the Smuggling of Migrants Protocol)</p> | <p>To ensure that appropriate protection and assistance measures are in place to meet the special needs of smuggled migrants who are unaccompanied or separated children (art. 16, para. 4, of the Smuggling of Migrants Protocol) (The term “unaccompanied children” is defined in para. 7 of Committee on the Rights of the Child General Comment No. 6 (2005))</p> | <p>Guardian or adviser and legal representative appointed to unaccompanied or separated children (art. 18, para. 2, and art. 20, para. 1, of the Convention on the Rights of the Child)</p> | <p>Identify and register unaccompanied and separated children as soon as possible in an age- and gender-sensitive manner</p> <p>Provide unaccompanied and separated children with identity documentation as soon as possible</p> <p>Commence family tracing as early as possible (art. 22, para. 2; art. 9, para. 3; and art. 10, para. 2, of the Convention on the Rights of the Child)</p> <p>Establish framework and take necessary measures to appoint a competent guardian or adviser and legal representatives to unaccompanied or separated children, taking into consideration the views of the child (art. 18, para. 2, and art. 20, para. 1, of the Convention on the Rights of the Child)</p> <p>Provide children with access to domestic children care mechanisms</p> <p>Inform children about risks, and establish measures to provide follow-up to children particularly at risk</p> <p>Build capacity and support persons appointed as guardians, advisers and legal representatives</p> <p>Establish review mechanisms to monitor the quality of guardianships, advice and legal representation to ensure the best interests of the child are represented</p> | <p>Increase in number and efficiency of children identified and registered</p> <p>Timeliness of provision of identity documents to smuggled migrants who are unaccompanied or separated children</p> <p>Timeliness and effectiveness of family tracing resulting in increased reunification</p> <p>Evidence that guardian or adviser and legal representative are appointed and evidence (for instance, transcripts) that child’s wishes and views are considered</p> <p>Number of unaccompanied or separated smuggled migrant children who have access to domestic child care mechanisms</p> <p>Information in an increased number of relevant languages is available for smuggled migrant children, and increased number of relevant languages spoken by translators</p> <p>Increased capacity of guardians, support persons and legal representatives to effectively work with smuggled migrants who are unaccompanied and separated children</p> <p>Review mechanisms in place result in ongoing improvement of services provided to unaccompanied and separated children</p> |
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TABLE 3. PREVENTION

| A | B | C | D | E |
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| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| <p>1</p> <p>Prevention of migrant smuggling (art. 2 of the Smuggling of Migrants Protocol and art. 31 of the Organized Crime Convention)</p> | <p>To prevent migrant smuggling, in compliance with international standards through legislative, administrative or other measures</p> <p>To ensure strategies to prevent migrant smuggling are in accordance with international law, including human rights, humanitarian and refugee law, and take into consideration special needs of women and children (art. 16, para. 4, and art. 19, para. 1, of the Smuggling of Migrants Protocol) (See table 2 (Protection), 1.B)</p> | <p>Comprehensive and coherent policies or strategies on migrant smuggling in place (including crime prevention, migration, employment, health, security, border and visa, non-discrimination, economic development, human rights and refugee protection policies)</p> | <p>Review and enact or amend legislation and/or policies to prevent migrant smuggling, in connection with related issues such as crime, migration, health, security, border and visa, non-discrimination, child protection, human rights, refugee protection and development, and amend policies on the prevention of migrant smuggling and international obligations</p> <p>Conduct comprehensive risk analyses and human rights impact assessments and use independent research relating to crime and social science in the development of prevention policies</p> <p>Allocate resources to prevent and combat migrant smuggling</p> <p>Build capacity at national and local levels to prevent migrant smuggling</p> <p>Facilitate independent monitoring of migrant smuggling prevention policies</p> | <p>Evidence that legislation, policies, strategy/plan of action are updated on the basis of regular assessments of changes in migrant smuggling and in accordance with international obligations</p> <p>Evidence-based approach to elaboration of prevention strategies, reflecting independent research relating to crime and social science, as well as risk analyses and human rights impact assessments</p> <p>Evidence that adequate human, institutional and financial resources are allocated for implementation of measures to prevent migrant smuggling</p> <p>Increased national and local capacity to prevent migrant smuggling</p> <p>Evidence of regular independent monitoring of effectiveness of policies to prevent migrant smuggling by international and national non-governmental organizations</p> |

PREVENTION OF MIGRANT SMUGGLING BY SEA

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| <p>2</p> <p>Appropriate action in response to confirmed suspicions of migrant smuggling by sea (art. 8 of the Smuggling of Migrants Protocol)</p> | <p>(a) To prevent and combat migrant smuggling at sea, while protecting and assisting smuggled migrants (art. 8 of the Smuggling of Migrants Protocol)</p> | <p>Jurisdiction established over migrant smuggling at sea (See table 1 (Prosecution), 7.A)</p> <p>Implementation of the Smuggling of Migrants Protocol does not deter actors from rescuing persons in distress at sea, regardless of whether migrant smuggling is suspected (See table 2 (Protection), 11.B)</p> | <p>Review and enact or amend legislation in accordance with article 8 of the Smuggling of Migrants Protocol (arts. 8 and 19 of the Protocol) to ensure that no measures taken without express authorization of flag State except those necessary to relieve imminent danger to lives (art. 8, para. 5, of the Smuggling of Migrants Protocol; and art. 27; art. 58, paras. 2 and 3; and arts. 91, 92, 94 and 110 of the Convention on the Law of the Sea)</p> <p>Consider reviewing, enacting or amending legislation to enable boarding and searching vessel without nationality where migrant smuggling is suspected, and taking appropriate measures in accordance with law where migrant smuggling is confirmed (art. 8, paras. 2 and 7, of the Smuggling of Migrants Protocol; and arts. 27, 73 and 110 of the Convention on the Law of the Sea)</p> <p>Allocate adequate resources to prevent migrant smuggling at sea, protect smuggled migrants and cooperate to these ends</p> <p>Limit authority to exercise powers created pursuant to the of the Smuggling of Migrants Protocol only to personnel who have necessary training, competence and equipment (art. 94, paras. 3 and 4, of the Convention on the Law of the Sea)</p> | <p>Evidence that legislation in accordance with the Smuggling of Migrants Protocol, making the duty to rescue a key priority in circumstances where there is evidence of peril at sea</p> <p>Legislation in place to enable boarding and searching vessels without nationality where migrant smuggling is suspected, and taking appropriate measures where migrant smuggling has been confirmed</p> <p>Evidence of adequate financial, human, technological and communications resources to address migrant smuggling at sea, resulting in increased effectiveness in accordance with international standards</p> <p>Evidence of clear allocation of responsibilities regarding migrant smuggling at sea among relevant actors who have necessary training, competence and equipment</p> <p>Strict standards in place to control unseaworthy vessels to prevent them from departing from ports or shores</p> |
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TABLE 3. PREVENTION (Continued)

| A | B | C | D | E |
|---------------------|---|---|--|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | <p>(b) To ensure that any measures taken in response to migrant smuggling at sea take into consideration the safeguard contained in the Smuggling of Migrants Protocol (art. 9 of the Smuggling of Migrants Protocol) and are in accordance with international law, including human rights, humanitarian and refugee law and international law of the sea (art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>Measures taken in respect of vessels at sea are in accordance with article 9, paragraph 1, of the Smuggling of Migrants Protocol and article 98, paragraph 1 (a) and (b), and article 111 of the Convention on the Law of the Sea</p> <p>Measures taken, adopted or implemented to prevent migrant smuggling at sea do not interfere with (a) rights and obligations and exercise of jurisdiction of coastal States in accordance with international law of the sea; and (b) authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel (art. 9, para. 3 (a) and (b), of the Smuggling of Migrants Protocol and the Convention on the Law of the Sea)</p> <p>Vessels are compensated for any loss or damage sustained pursuant to unfounded measures, where vessel has not committed any act justifying measures taken (art. 9, para. 2, of the Smuggling of Migrants Protocol)</p> | <p>Implement safety standards before authorizing vessels to depart ports or shores and prevent unseaworthy vessels from sailing (arts. 94, 219 and 220 of the Convention on the Law of the Sea)</p> <p>Where measures are taken against a vessel, (a) ensure the safety and humane treatment of persons on board and respect the principle of non-refoulement; (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 flag State or other interested State; and (d) ensure, within available means that any measures taken with regard to the vessel is environmentally sound (art. 9, para. 1, of the Smuggling of Migrants Protocol)</p> <p>Designate financial resources to fund compensation of vessels for loss or damage</p> <p>Clearly mark any vessels or aircraft used in responding to migrant smuggling by sea (art. 9, para. 4, of the Smuggling of Migrants Protocol)</p> | <p>Evidence that persons on board vessels are treated humanely, security of vessel and cargo are not endangered, commercial or legal interests of the flag State are not prejudiced, measures taken are environmentally sound, and measures taken at sea are not in contravention of international law of the sea</p> <p>Adequate financial resources available to compensate vessel owners/operators for loss or damage resulting in increased compensation paid to vessels against amount of loss or damage incurred</p> <p>Evidence that authorized Government vessels are clearly marked and identifiable as such, that vessels marked as Government vessels are regularly screened and that action is taken against vessels marked without authorization</p> |

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| | | | <p>Interception at sea carried out only by vessels or aircraft clearly marked and identifiable as being on Government service and authorized to that effect (art. 9, para. 4, of the Smuggling of Migrants Protocol and art. 29; art. 58, paras. 2 and 3; and arts. 110 and 111 of the Convention on the Law of the Sea)</p> | | |
| BORDER MEASURES | | | | | |
| 3 | <p>Border controls to prevent and detect migrant smuggling to the extent possible (art. 11, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>To strengthen border controls to prevent migrant smuggling (art. 11, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>Measures in place to strengthen border controls against smuggling of migrants to the extent possible</p> | <p>Review and amend border control legislation and policies to comply with the Smuggling of Migrants Protocol and other international law including human rights, refugee and humanitarian law</p> <p>Commit resources (human, financial, technological, transportation) to strengthen border control capacity to counter migrant smuggling</p> <p>Ensure well-functioning border crossing procedures, including use of pre-screening of arriving persons, pre-reporting by carriers of passengers who will be arriving, and use of modern technology such as biometrics</p> <p>Build capacity of border officials (See table 3 (Prevention), 7.B)</p> <p>Include practical measures in border control operational plans and strategies for identifying and referring potentially smuggled individuals</p> <p>Make relevant language resources available at borders (e.g. multilingual staff, written materials, MP3 (digital audio recording) tools)</p> | <p>Border control policies comply with the Smuggling of Migrants Protocol and other international law</p> <p>Evidence of adequate resources committed to strengthen border capacity</p> <p>Evidence that structures and mechanisms for border control function well, use modern technology etc.</p> <p>Increased capacity of border officials, including in respect of human rights and refugee protection</p> <p>Increased detection and interception of migrant smuggling situations at borders</p> <p>Evidence of availability of language resources at borders</p> <p>Evidence of independent monitoring and evaluation policies on border control policies</p> |

TABLE 3. PREVENTION (Continued)

| A | B | C | D | E |
|---------------------|---|--|--|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| 4 | <p>Prevention of transport operated by commercial carriers from being used to smuggle migrants (art. 11, paras. 2- 4, of the Smuggling of Migrants Protocol)</p> <p>(a) To prevent commercial carriers from being used by migrant smugglers through the adoption of legislative or other measures (art. 11 of the Smuggling of Migrants Protocol)</p> <p>(b) To ensure that implementation of carrier provisions does not undermine rights and protection of smuggled migrants or others (art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>Legislative or other measures in place to prevent commercial carriers from being used to smuggle migrants (art. 11, para. 2, of the Smuggling of Migrants Protocol)</p> <p>Legislation implemented to obligate cross-border carriers to check the travel documents of passengers (art. 11, para. 3, of the Smuggling of Migrants Protocol)</p> <p>Commercial carriers are subjected to appropriate sanctions if they fail to check travel documents of passengers (art. 11, para. 4, of the Smuggling of Migrants Protocol)</p> | <p>Put in place a monitoring mechanism or expand the mandate of existing monitoring authority to address migrant smuggling responses at borders</p> <p>Review and enact or amend legislation to obligate commercial carriers to ascertain that travellers possess documents needed to enter destination States, without prejudice to obligations of immigration officials</p> <p>Establish liability of and provide sanctions for carriers who fail to ascertain travellers' possession of necessary travel documents</p> <p>Build capacity and awareness about migrant smuggling among commercial carrier personnel through training and awareness-raising measures and by posting airport liaison officers</p> <p>Exercise discretion not to hold carriers liable in cases where they have transported undocumented asylum-seekers or refugees (see A/55/383/Add.1, paras. 80 and 103)</p> <p>Review and enact or amend carriers' liability legislation to ensure that sanctions are not enforced if smuggled migrants are</p> | <p>Evidence that legislation obliges carriers to ascertain travellers' possession of travel documents</p> <p>Evidence that commercial carriers subjected to appropriate sanctions for failing to check travel documents, resulting in increased identification of passengers without appropriate travel documents</p> <p>Increased capacity of commercial carrier personnel in addressing migrant smuggling</p> <p>Evidence that discretion is used to waive carrier liability in cases where they undocumented asylum-seekers or refugees have been transported</p> <p>Independent evaluation reports on the impact of carriers' liability on access to protection for asylum-seekers, and on reducing migrant smuggling</p> |

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| | <p>To ensure that implementation of article 11, paras. 2-4, of the Smuggling of Migrants Protocol are not interpreted or applied in a way that is discriminatory (art. 19, para. 2, of the Protocol</p> | | <p>admitted to the asylum procedure (art. 14 of the Universal Declaration of Human Rights)</p> <p>Implement systems or mechanisms to review measures required of carriers to ensure that they do not produce incentive structures or results that contravene the State's human rights obligations</p> <p>Encourage carriers to make sure that they do not undermine protection of persons at risk or apply required measures in a discriminatory way</p> <p>Require carrier companies to exercise human rights due diligence in accordance with their separate responsibility to respect human rights when discharging provisions to prevent smuggling of migrants</p> | <p>Evidence that State agencies or interdepartmental bodies mandated to review human rights impact of required actions</p> <p>Evidence that policies or guidelines encouraging carriers to report on human rights policies and impacts</p> <p>Carrier companies operating in contexts where the risk of migrant smuggling is particularly pertinent, have a place in appropriate human rights policies, periodic impact assessments, integration of commitments and assessments in company practice and tracking of and reporting of performance</p> |
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MEASURES PERTAINING TO DOCUMENTS

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| <p>5 Implementation and strengthening of security and control of documents to prevent migrant smuggling (art. 12 of the Smuggling of Migrants Protocol)</p> | <p>(a) To ensure that travel or identity documents issued are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued (art. 12, subpara. (a), of the Smuggling of Migrants Protocol)</p> | <p>Legal standards and measures in place requiring use of minimum standards of security technology in place, to ensure that travel and identity documents are of such quality that they cannot be altered or misused</p> | <p>Review and enact or amend legislation in accordance with international standards, to ensure that forms of documents are prescribed by legislation, to raise standards of documents</p> <p>Adopt and implement higher security standards relating to the issue of travel or identity documents and supporting documents</p> <p>Consult technical experts in the drafting of legal standards requiring the use of document security technology</p> | <p>Legislation in place to ensure documents are legally issued and to ensure that enhanced versions of documents are recognized as valid</p> <p>Procedures for issuing travel or identity documents and standards of document security in place according to international standards</p> <p>Evidence that technical experts are consulted in development of document security and control standards</p> |
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TABLE 3. PREVENTION (Continued)

| A | B | C | D | E |
|---------------------|---|--|--|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | <p>(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 (art. 12, subpara. (b), of the Smuggling of Migrants Protocol)</p> | <p>Legal standards and measures in place to protect the integrity and security of travel or identity documents and to prevent their unlawful creation, issuance or use</p> | <p>Invest in new and existing technology to strengthen document security</p> <p>Build capacity as necessary to continually strengthen travel and identity documents, in line with international standards</p> <p>Put in place mechanisms to continually check document integrity and validity in accordance with international standards</p> <p>Centralize issuing authorities and develop or improve mechanisms for checking document integrity and validity (for both travel and identity documents and supporting documents)</p> <p>Strengthen cooperation with other States to improve integrity and security of all identification documents, including through the conclusion of data-sharing agreements or arrangements</p> <p>Regular capacity-building and monitoring of consular staff in relation to document security and control and in corruption</p> <p>Carry out regular risk assessments of vulnerability to corruption of document issuing systems</p> | <p>Evidence of budget allocation to support use of new technologies to strengthen document security and control, to the extent permitted by resources</p> <p>Evidence of continual development of low-cost technologies that minimize the need for maintenance</p> <p>Mechanisms in place to check document integrity and validity in accordance with international standards</p> <p>Centralized document issuing authority in place</p> <p>Data-sharing agreements or arrangements in place between consular authorities on document security</p> <p>Increased capacity of consular staff in relation to document security and control and corruption</p> <p>Regularity of risks assessments of consular issuing authorities' vulnerability to corruption</p> <p>Evidence of investigations and prosecutions of corrupt consular staff</p> <p>Increased number of liaison officers sent to other countries or hosted from other countries</p> |

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| | | | | <p>Investigate and prosecute corruption of consular staff</p> <p>Use liaison officers from countries of origin and destination</p> <p>Research how false documents are obtained and used in order to implement measures that address weaknesses</p> | <p>Evidence that research is conducted into document security and that responses are amended based on evidence</p> |
| <p>6</p> <p>Verification of legitimacy and validity of documents at the request of another State (art. 13 of the Smuggling of Migrants Protocol)</p> | <p>To decrease the risk of misuse of genuine documents and increase the detection of falsified documents used in the commission of migrant smuggling</p> <p>To ensure that the legitimacy and validity of documents issued is verified within a reasonable time, at the request of another State party (art. 13 of the Smuggling of Migrants Protocol)</p> | <p>Legitimacy and validity of travel or identity documents issued or purported to have been issued by State and suspected of being used for migrant smuggling, verified within a reasonable time at the request of another State (art. 13 of the Smuggling of Migrants Protocol)</p> | <p>Review and enact or amend legislation as necessary, allocate adequate resources and implement administrative changes to permit verification of document legitimacy and validity</p> <p>Establish central authority to receive and act on requests to verify documents</p> <p>Allocate adequate resources (human, technological, linguistic) to build capacity of central authority to receive and respond to requests</p> <p>Provide up-to-date contact information about central authority to other States</p> <p>Put in place procedures and mechanisms to allow for timely verification and validations of documents</p> <p>Where possible, use international Criminal Police Organization (INTERPOL) databases to register lost and stolen documents</p> <p>Build capacity of border, immigration and law enforcement officials through regular training to detect travel and identity documents which have been produced fraudulently or procured, provided or possessed</p> | <p>Legislation allows for efficient document verification and validation</p> <p>Central authority designated to receive and act on document requests</p> <p>Increased quality and quantity of resources allocated to central authority for verification and validation of travel documents</p> <p>Evidence that central authority is readily contactable by other States</p> <p>Timeliness of verification and validation following request of another State</p> <p>Evidence that the INTERPOL database of lost and stolen documents is used where possible (both to check for lost and stolen documents and to report such documents)</p> <p>Increased capacity of staff in document verification and frequency of training sessions</p> | |

TABLE 3. PREVENTION (Continued)

| A | B | C | D | E |
|--|---|---|---|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| 7 | To build capacity of law enforcement and other relevant officials in preventing migrant smuggling and in the humane treatment of smuggled migrants, while respecting their rights | Training programmes delivered include components on (a) improving the security and quality of travel documents; (b) recognizing and detecting fraudulent travel or identity documents; (c) gathering criminal intelligence, particularly in relation to the identification of organized criminal groups, methods used to transport migrants, the misuse of travel or identity documents, and the means of concealment used in the smuggling process; (d) improved procedures for detecting migrant smuggling at conventional and non-conventional points of entry and exit; and (e) the humane treatment of migrants and the protection of their rights (art. 14, para. 2 (a)-(e), of the Smuggling of Migrants Protocol), as well as the special needs and rights of refugees | Assess existing capacity of law enforcement, border, immigration, coastguard, criminal justice officers, medical and health-care workers and other actors as necessary on migrant smuggling and related issues (including identifying victims of human trafficking and violence, refugee protection, human rights and discrimination) Deliver specialized training on preventing migrant smuggling and humane treatment of migrants in accordance with article 14, paragraph 2, of the Smuggling of Migrants Protocol Cooperate with international organizations, non-governmental organizations and civil society to develop and deliver training on migrant smuggling and systematically mainstream human rights and refugee protection training in migrant smuggling capacity-building Update training materials and deliver training regularly to ensure sustainability of capacity-building and mainstreaming of migrant smuggling training into study syllabuses for relevant actors | Capacity assessments of relevant officials carried out Increased resources devoted to training in addressing migrant smuggling and increased number of recipients to receive training in accordance with of the Smuggling of Migrants Protocol Involvement of international organizations, non-governmental organizations and civil society actors involved in developing and delivering training on migrant smuggling at the local, national and international level on a regular basis Regular update of training materials, regular delivery of training and evidence of documented changes in study syllabuses for law enforcement, border, immigration, coastguard, criminal justice officers, medical and health-care workers and other actors to include migrant smuggling |
| TRAINING AND TECHNICAL ASSISTANCE | | | | |

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| 8 | <p>Consider providing technical assistance to States that are frequently origin, transit and/or destination countries (art. 14, para. 3, of the Smuggling of Migrants Protocol)</p> | <p>To encourage States with relevant expertise to share their experience and build capacities elsewhere</p> <p>To increase the capacity of States to combat migrant smuggling</p> | <p>Consider providing technical assistance to States that are frequently countries of origin, transit and/or destination for smuggled migrants</p> | <p>Assess the capacity of States of origin, transit and destination to combat migrant smuggling</p> <p>Make every effort to provide necessary resources such as vehicles, computer systems and document readers, in order to combat migrant smuggling and assist States to maintain the resources provided</p> <p>Put in place coordination mechanism(s) to ensure coordination of technical assistance provided to maximize benefits and reduce duplication</p> <p>Cooperate with other relevant States, individuals, international organizations, non-governmental organizations and others as necessary in the delivery of technical assistance and in the exchange of best practices</p> <p>Monitor and assess the sustainable impact of technical assistance provided</p> | <p>Assessments conducted on capacity of States to combat migrant smuggling</p> <p>Extent and type of resources allocated to States to increase their capacity to combat migrant smuggling and to maintain the resources provided</p> <p>Technical assistance coordination mechanism in place and utilized to increase the number of States provided with technical assistance against migrant smuggling</p> <p>Evidence of cooperation with other relevant States, individuals, international organizations, non-governmental organizations and others in the delivery of technical assistance and exchange of best practices</p> <p>Sustainable impact of technical assistance</p> |
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PUBLIC AWARENESS CAMPAIGNS

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| 9 | <p>Public awareness of migrant smuggling (art. 15 of the Smuggling of Migrants Protocol and art. 31, para. 5, of the Organized Crime Convention)</p> | <p>(a) To raise awareness of the fact that migrant smuggling is a criminal activity frequently perpetrated by organized criminal groups for profit (art. 15, para. 1, of the Smuggling of Migrants Protocol)</p> <p>To raise awareness of the fact that migrant smuggling poses serious risks to the migrants concerned (art. 15, paras. 1 and 2, of the Smuggling of Migrants Protocol)</p> | <p>Strategy or comprehensive prevention programmes or other measures in place, to raise awareness of the fact that migrant smuggling is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned, including the risk of falling victim to organized criminal groups</p> | <p>Designate authority and resources to raise awareness</p> <p>Conduct baseline research including household studies to evaluate awareness of migrant smuggling</p> <p>Identify target audience (potential smuggled migrants, potential migrant smugglers, parliamentarians, legislators, diaspora communities, public officials, commercial carriers, local communities, civil society and the public at large) and involve the target audience in the design and implementation of public awareness campaigns</p> | <p>Authority designated to raise awareness of migrant smuggling</p> <p>Evidence that baseline research including household studies conducted to evaluate awareness</p> <p>Evidence that target audience involved in design and implementation of awareness-raising campaigns, and that content and form of materials created and disseminated is tailored to target groups</p> |
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TABLE 3. PREVENTION (Continued)

| A | B | C | D | E |
|---------------------|--|---|--|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | | <p>Include information on criminality of and risks posed by migrant smuggling, the right to leave a country including one's own, the right to seek asylum and legal migration options</p> <p>Consider implementing awareness-raising programmes that jointly address migrant smuggling, human trafficking, and human rights and refugee implications of the Smuggling of Migrants Protocol, including the fact that migrant smuggling may involve movement of refugees who have no choice but to use smugglers to escape persecution</p> <p>Design and implement campaigns in cooperation with international organizations, non-governmental organizations, chambers of commerce, trade unions, employers associations and others</p> <p>Develop indicators to evaluate impact and share lessons learned</p> | <p>Increase in number of people aware of the risks of migrant smuggling, the fact that migrant smuggling is a crime posing several risks, as well as regular migration options, the right to leave and the right to seek asylum</p> <p>Increased number of people sensitized to the risk of human trafficking posed by migrant smuggling</p> <p>Evidence of cooperation among Government and non-governmental actors, local communities and civil society groups in designing and implementing campaigns</p> <p>Evidence that impact evaluated and lessons learned are shared</p> |
| | <p>(b) To engage the media in combating migrant smuggling</p> | <p>Media are sensitized and informed about migrant smuggling and related issues</p> | <p>Carry out information campaigns to provide media outlets with accurate, objective and balanced information about migrant smuggling</p> | <p>Media are incorporated in the migrant smuggling policy, and provided with increased quality and quantity of information about migrant smuggling through increased information campaigns and press briefings</p> |

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| | | <p>Appropriate measures taken against the dissemination of misleading information relating to emigration and immigration (art. 68, para. 1 (a), of the Migrant Workers Convention)</p> <p>Awareness-raising measures taken in respect of media complicit with freedom of expression (art. 19 of the International Covenant on Civil and Political Rights)</p> | <p>Review and enact or amend legislation on freedom of expression to support awareness-raising about migrant smuggling</p> <p>Implement strict policies to protect anonymity of sources</p> <p>Take measures to combat the dissemination of misinformation in the media and among actors motivated by profits or links to irregular movements of people</p> <p>Support production of television and radio programmes, documentaries and other media including films, internet sites and comic books, to inform vulnerable communities about the risks of migrant smuggling</p> | <p>Legislation in place on freedom of expression supports awareness-raising about migrant smuggling</p> <p>Policies in place to protect sources of information and evidence that no individual identities of sources are inappropriately divulged</p> <p>Evidence that media are not misused to contribute to migrant smuggling</p> <p>Increased variety of media are used to raise awareness of migrant smuggling, as well as increased quality and quantity of media reports on migrant smuggling, increased audience/circulation figures to result in increased sensitization to migrant smuggling and increased public debate about migrant smuggling and related</p> |
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ADDRESSING ROOT CAUSES

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| 10 | <p>Promotion or strengthening, as appropriate, of developing programmes to address root causes (art. 15, para. 3, of the Smuggling of Migrants Protocol)</p> | <p>(a) To prevent migrant smuggling by addressing the socio-economic causes of migrant smuggling in countries of origin taking into account the socio-economic realities of migration</p> | <p>Identify groups and communities vulnerable to migrant smuggling to target measures to address root causes of migrant smuggling</p> <p>Take measures to reduce vulnerability to migrant smuggling through, for example, microcredit programmes, skills training, job counselling, education programmes, programmes to promote women's participation in economic decision-making; programmes to keep children in school, grants to non-governmental organizations</p> | <p>Evidence of identification of vulnerable groups and communities to target migrant smuggling prevention strategies</p> <p>Evidence of increased quantity and quality of direct development assistance provided to address root causes of irregular/forced migration/vulnerability to being smuggled, through increased efforts of origin countries to increase employment opportunities and support sustainable livelihoods, pursue economic policies and implement commitments to support citizens</p> |
| | | <p>Measures taken in accordance with international human rights law, to progressively realize the enjoyment of economic, social and cultural rights without discrimination in States of origin, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of smuggling of migrants (art. 15, para. 3, of the Smuggling of Migrants Protocol, the International Covenant on Economic, Social and Cultural</p> | | |

TABLE 3. PREVENTION (Continued)

| A | B | C | D | E |
|---------------------|---|--|---|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of the Child, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Rights of Persons with Disabilities) | Free and meaningful participation of affected community, including individuals and groups most vulnerable to smuggling, is ensured in the process of designing, adopting, implementing and monitoring migrant smuggling prevention measures | Evidence of participation of affected communities and individuals in measures to prevent migrant smuggling |
| | | Migrant smuggling prevention strategies and policies include measures in place to address root causes such as poverty, gender and other discrimination, lack of education and employment opportunities, social and economic marginalization, violence and abuse, as well as persecution and situations of conflict | Conduct and draw upon relevant social science research undertaken in designing strategies and policies to address root causes of migrant smuggling, including push factors | Evidence of increased research on the relationship between migration and development and use of research to inform policymaking in respect of addressing root causes of migrant smuggling |
| | | Policies to prevent migrant smuggling are holistic and designed in a comprehensive and balanced manner, in respect of the socio-economic causes of migrant smuggling, including pull factors | Cooperate with countries of transit and destination countries to develop and implement mutually beneficial approaches to migration, development and migrant smuggling prevention | Evidence of cooperation between countries of origin and destination to develop mutually beneficial approaches to migration, development and migrant smuggling prevention |
| | (b) To prevent migrant smuggling by addressing the socio-economic causes of migrant smuggling in countries of destination and transit taking into account the socio-economic realities of migration | International labour standards and other international instruments, as well as guidelines, as appropriate, should play an important role to make these policies coherent, effective and fair (Migration for Employment Convention (Revised) 1949 (Convention No. 97), of the International Labour Organization (ILO); ILO Migrant Workers (Supplementary Provisions) | Take into account pull factors for migrant smuggling in designing and implementing migration, migrant smuggling and other policies | Migrant smuggling prevention policies take into account pull factors |
| | | | Consider expanding avenues for regular labour migration, taking into account labour market needs and demographic trends, and guide migrant workers through all stages of their migration including planning and preparing for labour migration, transit, arrival and reception, return and reintegration (ILO Conventions Nos. 97 and 143; Recommendations Nos. 86; Convention No. 110 (art. 18 and 26, para.1 (i); and Convention No. 151) | Evidence of measures in place to promote/support regular labour migration for decent work and other regular migration options to reduce demand for migrant smuggling |
| | | | | Evidence that family reunification measures in place result in reduced demand for migrant smuggling |
| | | | | Evidence that migrant smuggling prevention strategies draw upon relevant research |

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| <p>Increased number of international organizations, non-governmental organizations, civil society actors, migrant associations and other relevant actors in developing migrant smuggling prevention policies</p> | <p>Increased family reunification measures to reduce demand for migrant smuggling</p> <p>Conduct and draw upon relevant (social science and other) research undertaken in designing strategies and policies to address root causes of migrant smuggling, including pull factors</p> <p>Consult with international organizations, non-governmental organizations, civil society actors, migrant associations and other relevant actors in developing migrant smuggling prevention policies</p> | <p>Convention, 1975 (Convention No. 143); Migration for Employment Recommendation (Revised) 1949 (No. 86); Migrant Workers Recommendation 1975 (No. 151); ILO Employment Policy Convention 1964 (Convention No. 122)</p> | | |
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TABLE 4. COOPERATION

| A | B | C | D | E |
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| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| 1 | To promote cooperation among, within and between States parties and other relevant actors to prevent and combat migrant smuggling, while protecting the rights of smuggled migrants | <p>Coordination of all stakeholders involved in addressing migrant smuggling (including governmental institutions, authorities, labour inspectors, non-governmental organizations and other elements of civil society, private sectors, workers' and employers' organizations, child- and youth-care providers, asylum authorities and other relevant stakeholders)</p> <p>Comprehensive and coherent policies in place related to migrant smuggling and related issues (crime prevention, migration, employment, health, security, non-discrimination, economic development and human rights and refugee protection etc.)</p> <p>Cooperation with third countries is contingent on demonstrable compliance by such countries with international refugee and human rights law (art. 19, para. 2, of the Smuggling of Migrants Protocol)</p> | <p>Review and amend existing policies on migrant smuggling and related issues to coordinate role of all stakeholders</p> <p>Establish a multidisciplinary coordination mechanism or body in charge of implementing a coordinated and integrated national response to migrant smuggling</p> <p>Commit adequate resources to support implementation of national response to migrant smuggling</p> <p>Consult with other States, particularly those sharing common borders, prior to adoption of strategy/action plan to prevent migrant smuggling and protect smuggled migrants</p> <p>Conduct continued impact assessment of actions and measures, monitoring and follow-up of the implementation of a strategy/action plan to respond to new challenges</p> <p>Regular ongoing monitoring and evaluation of migrant smuggling strategy</p> | <p>Legal or administrative measures in place to establish a coordination body or structure</p> <p>Clear and effective division of labour among Government entities dealing with migrant smuggling</p> <p>Budget dedicated to implement strategy/action plan and coordinate activities on migrant smuggling</p> <p>Regular meetings of multidisciplinary coordination mechanism held at the national and international levels</p> <p>Strategy/action plan updated on the basis of regular assessments</p> <p>Evidence that coordination mechanism adapts to changed circumstances identified through regular ongoing monitoring and evaluation</p> |
| NATIONAL COORDINATION/COOPERATION | | | | |

FORMAL INTERNATIONAL COOPERATION

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| 2 | <p>Extradition (art. 16 of the Organized Crime Convention)</p> | <p>To strengthen prosecution of migrant smugglers by enabling their extradition</p> | <p>Migrant smuggling and related offences are recognized as extraditable offences in domestic law</p> | <p>Review and enact or amend legislation to ensure that migrant smuggling offences are extraditable</p> <p>Designate competent national authorities to oversee extradition of migrant smugglers</p> <p>Prosecute migrant smugglers where their extradition is not possible for reason of nationality</p> <p>Use the Organized Crime Convention as legal basis for extradition in absence of an extradition treaty</p> <p>Consider entering into extradition treaties with other States</p> <p>Consider use of conditional surrender</p> | <p>Legislation in place to recognize migrant smuggling and related offences as extraditable</p> <p>Competent national authorities designated to oversee extradition</p> <p>Successful extraditions or prosecutions of migrant smugglers</p> <p>The Organized Crime Convention is used as the legal basis for extradition in the absence of an extradition treaty</p> <p>Migrant smuggling recognized as extraditable between States where States do not make extradition conditional on the existence of a treaty</p> <p>Extradition treaties in place or number of States with whom an extradition agreement is in place</p> |
| 3 | <p>Mutual legal assistance (art. 18 of the Organized Crime Convention)</p> | <p>To ensure widest measures of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to migrant smuggling offences (art. 18, para. 1, of the Organized Crime Convention)</p> <p>To strengthen effective action to investigate and prosecute migrant smuggling, protect and assist smuggled migrants</p> | <p>Mutual legal assistance afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements to ensure that States parties have the ability to seek assistance with regard to taking evidence or statements from persons; effecting service of judicial documents; executing searches, seizures and freezing assets; examining objects and sites; providing information, evidentiary items and expert evaluations; providing originals or certified copies of relevant documents and records; identifying or tracing proceeds of crime; facilitating the voluntary appearance of persons in the requesting State; any other type of assistance not contrary to domestic law (art. 18 of the Organized Crime Convention)</p> | <p>Establish a procedure for mutual legal assistance using the Organized Crime Convention as legal basis (art. 18, para. 7, of the Organized Crime Convention)</p> <p>Establish and/or designate central national authority to facilitate communication for mutual legal assistance</p> <p>Build national capacity to make and execute mutual legal assistance requests</p> <p>Establish communication mechanism between requesting and requested States parties regarding mutual legal assistance requests</p> | <p>Mutual legal assistance procedure in place, based on the Organized Crime Convention</p> <p>Central national authority in place and designated to receive and execute requests or transmit them for execution</p> <p>Increased national capacity to make and execute mutual legal assistance requests</p> <p>Clear and functioning guidelines/procedures for handling requests, such as use of the UNODC Mutual Legal Assistance Request Writer Tool, are in place and utilized</p> |

TABLE 4. COOPERATION (Continued)

| A | B | C | D | E |
|--|---|---|---|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| 4 | Transfer of sentenced persons (art. 17 of the Organized Crime Convention) | Use of the Organized Crime Convention as the legal basis for mutual legal assistance (in absence of other formal arrangements) Central authority designated to handle mutual legal assistance requests | Put in place clear and functioning guidelines and procedures for handling mutual legal assistance requests, such as by using the UNODC Mutual Legal Assistance Request Writer Tool Ensure that no information on asylum applications is shared with asylum-seeker's country of origin | Mutual legal assistance successfully provided to other States parties in investigations, prosecutions and judicial proceedings in respect of migrant smuggling, without prejudice to the rights of smuggled migrants under international human rights, refugee and humanitarian law |
| 4 | To specifically support transfer of sentenced migrant smugglers to supplement extradition mechanism (conditional surrender, return of sentenced person to country of origin) | Use of transfer of sentenced persons for States parties that will extradite their own nationals only under condition of return Transfer of sentenced persons is in accordance with international law, including human rights and refugee law | Where necessary, establish bilateral and multilateral agreements on transfer of sentenced persons | Bilateral or multilateral agreements or arrangements on the transfer of sentenced persons in place, resulting in increased occurrence and frequency of transfers of sentenced persons |
| INVESTIGATIVE/OPERATIONAL COOPERATION | | | | |
| 5 | Law enforcement Cooperation (art. 27 of the Organized Crime Convention) | Channels for communication and police-to-police cooperation provided (art. 27, para. 1 (a), of the Organized Crime Convention) Other States parties are cooperated with in conducting inquiries into migrant smuggling (art. 27, para. 1 (b), of the Organized Crime Convention) Necessary items or quantities of substances for analytical or investigative purposes provided when appropriate (art. 27, para. 1 (c), of the Organized Crime Convention) | Enter into or strengthen bilateral or multilateral agreements or arrangements on direct cooperation between law enforcement agencies (art. 27, para. 2, of the Organized Crime Convention). Consider entering into bilateral or multilateral agreements or arrangements with countries of origin, transit and destination for using special investigative techniques for cooperation (art. 20, para. 2, of the Organized Crime Convention) | Bilateral and/or multilateral agreements or arrangements to support communication between national police in place, resulting in migrant smuggling investigations with other police Bilateral and/or multilateral agreements in place addressing special investigative techniques The Organized Crime Convention used as basis for cooperation in absence of other agreements or arrangements |
| 5 | To promote international investigative cooperation between law enforcement authorities to strengthen response against migrant smuggling To ensure that international cooperation in respect of migrant smuggling is in accordance with international law, including human rights, humanitarian and refugee law and is not discriminatory to persons on the ground that they have been smuggled (art. 19 of the Smuggling of Migrants Protocol) | | | |

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| | | <p>Effective coordination between competent authorities, agencies and services facilitated to promote exchange of personnel or other experts including posting of liaison officers (art. 27, para. 1 (d), of the Organized Crime Convention)</p> <p>Information exchanged on means and methods used by migrant smugglers (art. 27, para. 1 (e), of the Organized Crime Convention)</p> <p>Information exchanged and measures coordinated for early identification of migrant smuggling (art. 27, para. 1 (f), of the Organized Crime Convention)</p> <p>Cooperative agreements or arrangements in place (art. 27, para. 2, of the Organized Crime Convention)</p> | <p>Use of the Organized Crime Convention as the basis for law enforcement cooperation in the absence of agreements or arrangements considered (art. 27, para. 2, of the Organized Crime Convention)</p> <p>Cooperate in responding to migrant smuggling committed through use of modern technology (art. 27, para. 3, of the Organized Crime Convention)</p> <p>Send and receive liaison officers</p> | <p>Evidence of law enforcement cooperation in investigating migrant smuggling using modern technology</p> <p>Increased number of personnel posted in or exchanged with other States</p> |
| <p>6 Joint investigations (art. 19 of the Organized Crime Convention)</p> | <p>To ensure that migrant smuggling crimes are properly investigated and relevant evidence is gathered in the admissible format for prosecution with due respect to sovereignty of the countries involved</p> | <p>Use of joint investigation and prosecution teams in cases of migrant smuggling</p> <p>Bilateral or multilateral agreements or arrangements regarding the establishment of joint investigative teams in place</p> | <p>Review and enact or amend legislation to ensure joint investigation facilitated with respect to migrant smuggling investigations</p> <p>Build relationships of trust with potential investigative partners</p> <p>Conclude formal and informal bilateral or multilateral cooperation arrangements or arrangements on joint investigation teams on migrant smuggling</p> <p>Use co-located or non-co-located joint investigation teams in investigations of migrant smuggling</p> <p>Put in place coordination mechanisms and language interpretation resources to facilitate cooperation with law enforcement agencies in other countries</p> | <p>Legislation in place to facilitate joint investigations of migrant smuggling, on a case by case basis, including clear procedures for such investigation</p> <p>Increased trust between investigative partners</p> <p>Agreements or arrangements for joint investigation of migrant smuggling in place</p> <p>Co-located or non-co-located joint investigations carried out to investigate migrant smuggling</p> <p>Communication mechanisms in place resulting in increased enforcement agencies in different jurisdictions or different countries</p> |

TABLE 4. COOPERATION (Continued)

| A | B | C | D | E |
|---------------------|--|---|--|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| 7 | International cooperation for purposes of confiscation (art. 13 of the Organized Crime Convention) | <p>To require requested State parties to take particular measures to identify, trace and freeze, seize or confiscate proceeds of crime or property, equipment or other instrumentalities for the purpose of eventual confiscation</p> <p>Legislation in place that allows a State to respond to requests to identify, trace and freeze, seize or confiscate proceeds of crime or property, equipment or other instrumentalities</p> <p>Procedure in place in compliance with the Organized Crime Convention (art. 13 of the Organized Crime Convention)</p> | <p>Review all joint operation plans to ensure that they specifically prohibit refolement</p> <p>Appoint and use liaison officers</p> <p>Review and enact or amend legislation to allow State to identify, trace and freeze, seize or confiscate proceeds of crime or property, equipment or other instrumentalities</p> <p>Establish procedure using the Organized Crime Convention as basis (art. 13 of the Organized Crime Convention)</p> <p>Upon receiving a request for confiscation from another State party, either directly submit for enforcement by its competent authorities an order issued by the requesting State party or submit the request to competent authorities in order to obtain a domestic order of confiscation or consider refusal if the offence is not one of migrant smuggling or otherwise covered by the Organized Crime Convention</p> | <p>Joint operational plans specifically prohibit refolement</p> <p>Liaison officers are appointed and facilitate joint investigations</p> <p>Evidence that requests made and executed, where applicable, to identify, trace and freeze, seize or confiscate proceeds of crime or property, equipment or other instrumentalities for purposes of eventual confiscation relevant to migrant smuggling cases</p> <p>Procedure for confiscation in place using as the basis the Organized Crime Convention</p> <p>Evidence that all requests for confiscation submitted for enforcement are enforced or refused</p> |
| 8 | International cooperation for purposes of disposal of confiscated proceeds of crime or property (art. 14 of the Organized Crime Convention) | <p>Legislation and administrative procedures in place to dispose of confiscated proceeds of crime or property in accordance with the Organized Crime Convention (art. 14 of the Organized Crime Convention)</p> | <p>Give priority consideration to returning confiscated proceeds of crime or property to the requesting State party so that it can compensate victims of crime or return such proceeds of crime or property to their legitimate owners</p> | <p>Evidence that proceeds of crime or property confiscated are disposed of in accordance with domestic law and administrative procedures, and that a portion of confiscated proceeds or property are accounted for and disposed of</p> |

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| | | | | <p>through victim compensation and/or restoration to legitimate owners</p> <p>Agreements or arrangements on using confiscated property or funds to support intergovernmental bodies to fight crime and/or shared with other States parties</p> <p>Evidence that items or quantities of substances are provided or received for analytic purposes prior to disposal</p> |
| | | | <p>Give special consideration to concluding agreements or arrangements on; contributing the value of such proceeds of crime or property or funds derived from the sale of such proceeds to intergovernmental bodies specializing in the fight against crime; sharing such proceeds or property or funds derived from the sale of such proceeds or property with other States parties</p> <p>Provide or receive items or quantities of confiscated proceeds of migrant smuggling or property for analytic purposes prior to any disposal</p> | |

INFORMATION EXCHANGE

| | | | | |
|---|--|---|--|---|
| 9 | <p>Information exchange (art. 10 of the Smuggling of Migrants Protocol and art. 27 of the Organized Crime Convention)</p> | <p>To strengthen a knowledge-based, intelligence-led response to prevent and combat migrant smuggling, through exchange of relevant information</p> | <p>System in place to facilitate information exchange on</p> <ul style="list-style-type: none"> (a) embarkation and destination points, routes and carriers and means of transportation known or suspected of being involved in migrant smuggling; (b) identity and methods of organizations or organized criminal groups known or suspected of being involved in migrant smuggling; (c) authenticity and proper form of travel documents issued and theft or related misuse of blank or travel documents; (d) means or methods of concealment and transportation of persons, unlawful alternation etc. of travel or identity documents; (e) legislative experiences and practices and measures to prevent migrant smuggling; and (f) scientific and technological information to enhance prevention, detection and investigation of migrant smuggling (art. 10, para. 1, of the Smuggling of Migrants Protocol) | <p>Legislation in place allowing for information sharing and protection of information</p> <p>Evidence of prior consultation before sensitive information is shared</p> <p>Evidence of compliance with requests made by States parties transmitting information</p> <p>Evidence of increased transparency and efficiency of communication procedures in place between competent authorities, resulting in increased quality, quantity and relevance of information exchanges between and among States</p> <p>Information on extent, nature, means and methods of migrant smuggling systematically compiled to facilitate exchange</p> |
| | | | <p>Review and enact or amend legislation (including media or public access to information laws, official secrecy laws and similar legislation) to ensure balance between confidentiality and disclosure</p> <p>Where necessary and appropriate, consult with States providing/receiving sensitive information before sharing such information</p> <p>Comply with request(s) of a State party that transmitted information (art. 10, para. 2, of the Smuggling of Migrants Protocol)</p> <p>Establish a system or mechanism of integrated cooperation to exchange information between law enforcement, border, immigration and other relevant authorities and coordination of activities</p> | |

TABLE 4. COOPERATION (Continued)

| A | B | C | D | E |
|--|--|--|--|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | | <p>Harmonize and systematically compile empirical data to facilitate information exchange</p> <p>Use INTERPOL and regional law enforcement organizations to facilitate information exchange cooperation</p> <p>Use information received to strengthen law enforcement response to migrant smuggling</p> | <p>Use of INTERPOL and regional law enforcement organizations in exchange of information about migrant smuggling</p> <p>Evidence of increased detection of migrant smuggling through information exchange and coordination</p> |
| COOPERATION IN RESPECT OF BORDER MEASURES | | | | |
| 10 | Border cooperation (art. 11, para. 6, of the Smuggling of Migrants Protocol) | <p>Consider putting direct communication mechanisms in place to strengthen cooperation among border control agencies, compliant with domestic and international law, including human rights, humanitarian and refugee law and is not discriminatory to persons on the basis that they have been smuggled (art. 11, para. 6, and art. 19 of the Smuggling of Migrants Protocol)</p> | <p>Cooperate in the development of border control policies to harmonize policies on both sides of borders</p> <p>Review and enact or amend legislation as necessary to establish that relevant border agencies have authority to cooperate</p> <p>Establish direct channels of communication between border control agencies (art. 11, paras. 1 and 6, of the Smuggling of Migrants Protocol)</p> <p>Use bilateral, regional and international cooperation frameworks to strengthen border cooperation</p> | <p>Harmonized border control policies across borders</p> <p>Legislation in place to facilitate border cooperation</p> <p>Direct channels of communication between border control agencies in place and increased efficiency with which border officials can communicate, for instance, through a designated focal point for cooperation with international and regional police</p> <p>Regional and international cooperation frameworks support border cooperation</p> <p>Evidence that information at borders is provided to INTERPOL</p> |

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| | | | | <p>Evidence of joint border patrol teams</p> <p>Joint trainings of border control officers held or participated in</p> <p>Regular information exchange among Governments about national policies concerning entry and stay</p> <p>Information exchange and cooperation in respect of border controls results in increased efficiency and capacity of border officials to detect and intercept smuggling of migrants</p> <p>Transfer of functions in border control does not absolve human rights responsibilities of transferring State nor result in decreased protection and assistance of smuggled migrants</p> |
| | <p>Manage border systems to provide access to INTERPOL data</p> <p>Create joint border patrol teams between States</p> <p>Conduct joint training of border control officers from border-sharing countries</p> <p>Regularly exchange information among border-sharing States about national policies</p> <p>Facilitate cooperation between border, immigration and police officers to strengthen capacity to prevent migrant smuggling</p> <p>Ensure that cooperation in border control or transfer of border control responsibilities does not undermine protection of smuggled migrants or the responsibilities of the transferring State to uphold international law, including human rights, humanitarian and refugee law</p> | | | |

COOPERATION IN TRAINING AND TECHNICAL ASSISTANCE

| | | | | | |
|----|---|---|---|--|---|
| 11 | <p>Cooperation in training (art. 14, paras. 2 and 3, of the Smuggling of Migrants Protocol and art. 29 the Organized Crime Convention)</p> | <p>To promote cooperation between States and competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society to ensure adequate personnel training to prevent and combat smuggling in migrants and protect and assist smuggled migrants</p> | <p>Cooperate with competent international organizations, non-governmental organizations and civil society as appropriate to ensure adequate personnel training to prevent, combat and eradicate migrant smuggling and protect the rights of smuggled migrants (See table 3 (Prevention), 7.A and 8.A)</p> | <p>Establish programmes of training for domestic officials in accordance with domestic legislation of State and other States with whom cooperation will be necessary</p> <p>Provide training to/receive training from relevant personnel in partner countries/regions</p> <p>Create and maintain a roster of experts to devise and deliver training to personnel</p> | <p>Increased number of trainings delivered and number of personnel to have received training against migrant smuggling</p> <p>Increased training provided to and/or received from relevant personnel in partner countries/regions with whom cooperation is necessary</p> <p>Roster of training experts created and maintained</p> |
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TABLE 4. COOPERATION (Continued)

| A | B | C | D | E |
|---------------------|---|--|---|---|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | | <p>Develop and deliver training through cooperation with law enforcers, immigration officers, coastguards, prosecutors, judicial authorities, labour inspectors, social workers and other relevant officials within State and with other States, as well as with international organizations, non-governmental organizations and civil society actors</p> <p>Exchange personnel and promote study exchange between partner countries/regions</p> | <p>Evidence of multidisciplinary involvement, including of intergovernmental organizations and non-governmental organizations, in the development and delivery of training on migrant smuggling</p> <p>Increased number of personnel exchanged and study exchanges engaged in with those from partner countries/regions</p> |
| 12 | <p>Technical assistance cooperation (art. 14, para. 3, of the Smuggling of Migrants Protocol and art. 30 the Organized Crime Convention)</p> <p>To promote technical assistance cooperation to prevent and combat migrant smuggling and protect smuggled migrants and their rights</p> <p>To strengthen prevention of migrant smuggling, protection of smuggled migrants and cooperation to these ends</p> | <p>Cooperate with competent international organizations, non-governmental organizations other relevant organizations and civil society as appropriate to ensure adequate personnel training to prevent, combat and eradicate migrant smuggling and protect the rights of smuggled migrants (See table 3 (Prevention), 7. A and 8.A)</p> <p>Consider providing technical assistance to other States to prevent and combat migrant smuggling and protect smuggled migrants and their rights</p> <p>Technical assistance design and delivery in accordance with international law, including human rights, humanitarian and refugee law (art. 19 of the Smuggling of Migrants Protocol)</p> | <p>Cooperate with countries of origin, transit and destination on migrant smuggling by requesting and delivering technical assistance</p> <p>Cooperate with other States parties, intergovernmental organizations and non-governmental organizations in provision of technical assistance including resources and expertise</p> <p>Provide (or request) targeted funding and technical assistance to ensure that migrant smuggling can be addressed on a worldwide basis</p> <p>Promote regional and international efforts to mobilize resources and engage in technical cooperation to strengthen response to migrant smuggling, with support of relevant stakeholders</p> | <p>Evidence that technical assistance is delivered/received/requested to build capacity to counter migrant smuggling</p> <p>Evidence that relevant international organizations and non-governmental organizations are involved in technical assistance to prevent and combat migrant smuggling while protecting and assisting smuggled migrants</p> <p>Evidence of targeted funding and capacity-building assistance provided or requested to strengthen global response to migrant smuggling</p> <p>Evidence of regional and international efforts to mobilize resources and engage in technical cooperation to strengthen response to migrant smuggling</p> |

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| | | | | Utilize bilateral, regional and international training forums to share experience and expertise | Increased participation in bilateral, regional and international training sessions |
| | | | | Carry out human rights needs, risks and impact assessments prior to designing and delivering technical assistance | Evidence of human rights-based approach to technical assistance delivery |

COOPERATION IN ADDRESSING MIGRANT SMUGGLING BY SEA

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|----|--|--|---|--|--|
| 13 | Cooperation to prevent migrant smuggling by sea (arts. 7-9 of the Smuggling of Migrants Protocol) | <p>To promote cooperation to the fullest extent possible to prevent migrant smuggling by sea in accordance with the Smuggling of Migrants Protocol and international law of the sea (art. 7 of the Smuggling of Migrants Protocol)</p> <p>To ensure that cooperation to prevent migrant smuggling at sea is in accordance with international law, including human rights, humanitarian and refugee law (art. 7 of the Smuggling of Migrants Protocol; art. 19, para. 1, of the Smuggling of Migrants Protocol)</p> | <p>Jurisdiction over migrant smuggling at sea established (art. 15 of the Organized Crime Convention (See table 1 (Prosecution), 7.D)</p> <p>Cooperation agreements and mechanisms in place to enable requests for and rendering of assistance in suppressing migrant smuggling by sea (art. 8, para. 1, of the Smuggling of Migrants Protocol); notification of flag State, requesting confirmation of registry and authorization to take appropriate measures against vessel (art. 8, para. 1, of the Smuggling of Migrants Protocol); authorization of the requesting State to board, search and/or take appropriate measures with respect to the vessels found to be smuggling migrants (art. 8, para. 2, of the Smuggling of Migrants Protocol); informing the flag State of measures taken (art. 8, para. 3, of the Protocol); expeditious response to requests from another State party to determine whether vessel is entitled to fly flag or claim registry (art. 8, para. 4, of the Protocol)</p> | <p>Review and enact or amend legislation to provide law enforcement with necessary powers to address migrant smuggling at sea in accordance with the Smuggling of Migrants Protocol (art. 7 of the Smuggling of Migrants Protocol and art. 98, para. 2, of the Convention on the Law of the Sea)</p> <p>Critically consider any agreement entered into in respect of joint patrols in territorial seas of third countries, to ensure compliance with human rights standards</p> <p>Cooperate with international organizations, non-governmental organizations, civil society and other relevant actors in protecting and assisting smuggled migrants intercepted at sea</p> <p>Coordinate and cooperate with other States to ensure that shipmasters providing assistance by embarking persons in distress are released from obligations with minimum further deviation from vessel's intended voyage (reg. 33 of the Safety of Life at Sea Convention, and chap. 3.1.9 of the Search and Rescue Convention)</p> | <p>Legislation imbues law enforcement with power to address migrant smuggling at sea in accordance with the Smuggling of Migrants Protocol</p> <p>Evidence that agreements on joint patrol of territorial seas of third countries are publicly available, and that responsibility for human rights violations is maintained even where such violations are jointly committed with third countries, or where a third country commits the violation</p> <p>Evidence that assistance is requested and rendered efficiently in situations of migrant smuggling by sea, in cooperation with international organizations, non-governmental organizations, civil society and other relevant actors</p> <p>Evidence that inconvenient assistance by shipmasters providing assistance by embarking persons in distress is kept to a minimum</p> |
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TABLE 4. COOPERATION (Continued)

| A | B | C | D | E |
|---------------------|---|--|--|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | <p>Competent national authority to address migrant smuggling by sea has been designated and the Secretary-General of the United Nations has been notified (art. 8, para. 6, of the Protocol)</p> | <p>Review and enact or amend legislation as necessary to establish central authority or grant existing central authority with necessary powers (in particular, the power to authorize another State party to take action against vessels flying its flag) and/or provide existing central authority or create new authority to address migrant smuggling by sea</p> <p>Notify the Secretary-General of the United Nations of contact details of central authority and permit information to be maintained and circulated to all States parties (art. 8, para. 6, of the Smuggling of Migrants Protocol)</p> <p>Ensure designated central authority has capacity to coordinate with other domestic agencies, including maritime law enforcement authorities, including through access to national shipping registry Put in place arrangements and allocate necessary resources to enable central authority functions on a 24-hour basis</p> | <p>Central authority designated and has necessary power to cooperate effectively with other States on migrant smuggling at sea</p> <p>Secretary-General of the United Nations is in possession of up-to-date contact information of designated authority including address, telephone number, fax number, e-mail address, hours of operation, language(s) in which requests can be processed</p> <p>Increased capacity of central authority to coordinate with and receive requests from domestic authorities (including customs, police, maritime authorities and other law enforcement agencies), evidenced by increased number of domestic agencies accessible to central authority and expedited time required to establish contact</p> <p>Evidence of arrangements for the conduct of operation of designated authority on a 24-hour basis resulting in decreased time required for central authority to confirm registry with national shipping registry and carry out other functions</p> |

COOPERATION IN PREVENTION (art. 15 of the Protocol)

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|----|---|--|--|---|---|
| 14 | Cooperation to increase public awareness of potential victimization (art. 15, para. 2, of the Smuggling of Migrants Protocol) (See table 3 (Prevention), 9(a).E) | To promote collaboration among other States and relevant international and regional organizations in raising awareness of dangers of migrant smuggling | Collaborate with other States, relevant international and regional organizations in raising awareness of dangers of migrant smuggling (art. 15, para. 2, of the Smuggling of Migrants Protocol) | Cooperate in the field of public information to prevent migrant smuggling with other States and relevant intergovernmental organizations, non-governmental organizations, civil society actors and others in designing and implementing awareness-raising campaigns | Increased cooperation with other States parties in public information about migrant smuggling, resulting in raised awareness about the dangers of migrant smuggling |
| 15 | Cooperation in development programmes to address root causes (art. 15, para. 3, of the Smuggling of Migrants Protocol) (See table 3 (Prevention), 10(a).D) | To promote collaboration among States and relevant international and regional organizations in promoting development | Collaborate with other States, relevant international and regional organizations in promoting development (art. 15, para. 3, of the Smuggling of Migrants Protocol) | Cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration, paying special attention to economically and socially depressed areas | Increased cooperation at the national, regional and international levels to promote development in economically and socially depressed areas vulnerable to migrant smuggling, resulting in increased development and reduced demand for migrant smuggling |
| 16 | International cooperation among Member States through the conclusion of bilateral, regional or multilateral agreements or arrangements (art. 17 of the Smuggling of Migrants Protocol) (See table 3 (Prevention), 5(b).D, 8.E and 10(a).E) | To encourage international cooperation in preventing and combating migrant smuggling (art. 2 and art. 17, subpara. (a), of the Smuggling of Migrants Protocol) To enhance provisions of the Smuggling of Migrants Protocol (art. 17, subpara. (b), of the Protocol) | Consider concluding bilateral or regional agreements or operational arrangements to prevent migrant smuggling and enhance provisions of the Migrant Smuggling Protocol (art. 17 of the Smuggling of Migrants Protocol) | Enter into bilateral or regional agreements or operational arrangements or understandings aimed at (a) establishing the most appropriate and effective measures to prevent and combat migrant smuggling; and (b) enhancing provisions of the Migrant Smuggling Protocol (art. 17 of the Smuggling of Migrants Protocol) | Increased number of bilateral or regional agreements or operational arrangements or understandings entered into, resulting in increased cooperation on migrant smuggling |

COOPERATION IN RETURN OF SMUGGLED MIGRANTS

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|----|---|---|---|--|--|
| 17 | Facilitate and accept return of smuggled migrants found not to be in need of international protection (art. 18, paras. 1 and 2, of the Smuggling of Migrants Protocol) | To promote facilitation and acceptance without undue or unreasonable delay, of the return of a smuggled migrant found not to be in need of international protection who is a national or who has had the right of permanent residence at the time of return and has no entitlement to remain in the transit or destination country (art. 18, paras. 1 and 2, of the Smuggling of Migrants Protocol) | Return agreements and arrangements in place between States, which are complicit with international law Cooperation in return of smuggled migrants must be compliant with the principle of non-refoulement (art. 19, para. 1, of the Smuggling of Migrants Protocol, and art. 31 of the Refugee Convention) | Review and enact or amend legislation to ensure that officials are required to act (or consider acting) in response to requests and have the necessary legal authority to issue travel documents when a national is to be returned | Legislation in place designating competent authority to facilitate return Increased number of bilateral and multilateral agreements and arrangements in place to support return, resulting in increased number of voluntary returns over forced returns |
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TABLE 4. COOPERATION (Continued)

| A | B | C | D | E |
|---------------------|--|--|--|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time |
| | | | <p>Implementation of mandatory return with the full knowledge and agreement of the State where the smuggled migrant is being returned, including through such measures as conclusion of bilateral and multilateral agreements, emphasising preference of voluntary return</p> <p>Consider cooperation for burden-sharing in cases of mass influx, and to support sustainable return of migrants who do not qualify to stay</p> <p>Cooperate in return, repatriation and redocumentation of returning smuggled migrants</p> <p>Create reintegration policies that are coherent with development policies and involve cooperation with local authorities</p> <p>Build capacity of actors likely to be involved in return, bearing in mind requirements of article 16 and article 18, paragraph 5, of the of the Smuggling of Migrants Protocol</p> | <p>Evidence of burden-sharing in cases of mass influx and to support sustainable return of migrants</p> <p>Nationals and persons with permanent residency repatriated in cooperation with the State where the smuggled migrant is being returned, notably in the identification and redocumentation process</p> <p>Return complemented by efforts to reintegrate migrants in their community of origin, to ensure the sustainability of return and avoid re-smuggling</p> <p>Increased capacity of officials involved in return of smuggled migrants through appropriate training including components on human rights, refugees and humanitarian considerations</p> |
| 18 | <p>Verification of whether a smuggled migrant is a national or permanent resident (art. 18, para. 3, of the Smuggling of Migrants Protocol)</p> | <p>Verify without undue delay whether a smuggled migrant who is being returned is a national or has the right of permanent residence in the country to which he or she is being returned, if such verification is requested by the State where the smuggled migrant is (art. 18, para. 3, of the Smuggling of Migrants Protocol)</p> | <p>Review and enact or amend legislation to ensure officials are required to act in response to requests and to ensure that they have the necessary legal authority to issue travel documents to facilitate return of a national or resident</p> | <p>Legislation in place requiring officials to act in response to requests for assistance in return, resulting in increased number of verifications requested against number of verifications provided</p> |

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| 19 | <p>Issuance of travel documents or other authorization to facilitate return on request of another State party (art. 18, para. 4, of the Smuggling of Migrants Protocol)</p> | <p>To ensure that an undocumented smuggled migrant can be returned to State of origin/residence</p> | <p>Return cases are accepted by the State to which the smuggled migrant is being returned</p> | <p>Issue instructions and build capacity of diplomatic missions and consular authorities to cooperate with requesting States and other relevant authorities on the identification and redocumentation process of their own nationals</p> <p>Strengthen cooperation on the establishment of identity and redocumentation</p> | <p>Evidence that instructions have been issued and measures undertaken to build capacity of diplomatic missions and consular authorities</p> <p>Increased number of cooperation agreements on establishment of identity and redocumentation in place</p> |
| | <p>Issuance of travel documents or other authorization to facilitate return on request of another State party (art. 18, para. 4, of the Smuggling of Migrants Protocol)</p> | <p>To ensure that an undocumented smuggled migrant can be returned to State of origin/residence</p> | <p>Legislation in place to allow provision of travel documents to facilitate return of undocumented smuggled migrants</p> <p>Upon request, agree to issue such travel documents or other authorization as is necessary to enable smuggled migrant to travel to and re-enter the State to which the smuggled migrant is being returned (art. 18, para. 5, of the Smuggling of Migrants Protocol)</p> <p>Right to enter one's own country is observed and upheld (art. 12, para. 4, of the International Covenant on Civil and Political Rights)</p> <p>States cooperate in the identification and redocumentation process</p> | <p>Designate and/or strengthen capacity of competent national authority to issue travel documents or other authorizations</p> <p>Provide contact information of relevant competent national authority to relevant actors in other countries</p> <p>Cooperate with embassies and consulates for the issuance of proper documentation</p> <p>Where documents were seized by authorities, provide them to transit/origin country authorities to facilitate the continuous journey of the returning migrant</p> <p>Prevent persons from being rendered stateless by being refused necessary documents to return to their country of nationality or residence (para. 111 of the <i>Travaux Préparatoires</i>,^a and art. 28 of the 1954 Convention relating to the Status of Stateless Persons)</p> | <p>Evidence that competent national authority is designated and capable of responding to requests, for instance, evidenced through number of staff and hours of operation</p> <p>Evidence that contact information of the competent national authority is disseminated</p> <p>Evidence of cooperation with embassies and consulates for issuance of documentation</p> <p>Increased number of travel or other documents requested against number of travel or other documents issued</p> <p>Evidence that refusal and/or failure to provide necessary travel documents or other authorization has not led to statelessness of smuggled migrants</p> |

^a*Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5.)

TABLE 4. COOPERATION (Continued)

| A | B | C | D | E | |
|---------------------|---|--|---|--|--|
| PROTOCOL OBJECTIVES | SPECIFIC OBJECTIVES Intent of the provisions | FRAMEWORK REQUIREMENTS Minimum standards for action | IMPLEMENTATION MEASURES Best practices to achieve effective implementation | OPERATIONAL INDICATORS To measure and help monitor implementation over time | |
| 20 | Cooperation with relevant international organizations in carrying out return (art. 18, para. 6, of the Smuggling of Migrants Protocol) | To ensure that cooperation in return takes place in a transparent, safe, dignified and humane manner, in accordance with the human rights of smuggled migrants (art. 18, para. 5, of the Smuggling of Migrants Protocol) | <p>Consider cooperation with relevant international organizations in return (art. 18, para. 6, of the Smuggling of Migrants Protocol)</p> <p>Involve competent international organizations in process of returning smuggled migrants to countries where they are nationals or have right of permanent residence</p> | <p>Cooperate with international organizations, non-governmental organizations, civil society and other relevant actors in the facilitation of return</p> <p>Strengthen communication channels between Governments and regional and international organizations in order to regularly monitor facilitation of return and revise approaches</p> <p>Conclude cooperation agreements with relevant international organizations in relation to return of smuggled migrants, emphasizing preference of voluntary return</p> <p>Cooperate with international organizations to promote adequate economic conditions for facilitating durable social and cultural reintegration into States accepting returned migrants</p> | <p>Evidence of cooperation with international organizations, non-governmental organizations, civil society and other relevant actors in facilitation of safe, dignified and humane return of smuggled migrants</p> <p>Evidence of communication between governments and regional and international organizations to monitor return and revise approaches</p> <p>Cooperation agreements with relevant international organizations in place concerning return</p> <p>Cooperation agreements with international organizations emphasise preference of voluntary return, resulting in cooperation with relevant international organizations to strengthen conditions to which smuggled migrants are returned</p> |

Annex I

Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, with cross references to the Framework for Action and its introduction

| | Part two. Framework for Action (Table and section) | Part one. Introduction to the Framework (Paragraph number) |
|---|--|--|
| <i>The States Parties to this Protocol,</i> | | 47, 180 |
| <i>Declaring</i> that effective action to prevent and combat the smuggling of migrants by land, sea and air requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socio-economic measures, at the national, regional and international levels, | | |
| <i>Recalling</i> General Assembly resolution 54/212 of 22 December 1999, in which the Assembly urged Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned, and encouraged, where relevant, interregional, regional and subregional mechanisms to continue to address the question of migration and development, | | |
| <i>Convinced</i> of the need to provide migrants with humane treatment and full protection of their rights, | | |
| <i>Taking into account</i> the fact that, despite work undertaken in other international forums, there is no universal instrument that addresses all aspects of smuggling of migrants and other related issues, | | |
| <i>Concerned</i> at the significant increase in the activities of organized criminal groups in smuggling of migrants and other related criminal activities set forth in this Protocol, which bring great harm to the States concerned, Also concerned that the smuggling of migrants can endanger the lives or security of the migrants involved, | | |
| <i>Recalling</i> General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing illegal trafficking in and transporting of migrants, including by sea, | | |

| | Part two. Framework for Action (Table and section) | Part one. Introduction to the Framework (Paragraph number) |
|--|--|--|
| <p><i>Convinced</i> that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument against the smuggling of migrants by land, sea and air will be useful in preventing and combating that crime,</p> <p><i>Have agreed as follows:</i></p> | | |
| <p>I. General provisions</p> | | |
| <p>Article 1</p> <p>Relation with the United Nations Convention against Transnational Organized Crime</p> <p>1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.</p> <p>2. The provisions of the Convention shall apply, <i>mutatis mutandis</i>, to this Protocol unless otherwise provided herein.</p> <p>3. The offences established in accordance with article 6 of this Protocol shall be regarded as offences established in accordance with the Convention.</p> | | |
| <p>Article 2</p> <p>Statement of purpose</p> <p>The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.</p> | Prevention: 1.A; Cooperation: 1.A | 8, 47, 107 |
| <p>Article 3</p> <p>Use of terms</p> <p>For the purposes of this Protocol:</p> <p>(a) “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;</p> <p>(b) “Illegal entry” shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;</p> <p>(c) “Fraudulent travel or identity document” shall mean any travel or identity document:</p> <p>(i) That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or</p> <p>(ii) That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or</p> <p>(iii) That is being used by a person other than the rightful holder;</p> | Prosecution: 1.C | 9, 145 |

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| (d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non commercial service. | | |
| <p>Article 4</p> <p>Scope of application</p> <p>This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences.</p> | Protection: 1.A | 47, 107 |
| <p>Article 5</p> <p>Criminal liability of migrants</p> <p>Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.</p> | Prosecution: 5.A | 86, 155 |
| <p>Article 6</p> <p>Criminalization</p> <p>1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit:</p> <p>(a) The smuggling of migrants;</p> <p>(b) When committed for the purpose of enabling the smuggling of migrants:</p> <p>(i) Producing a fraudulent travel or identity document;</p> <p>(ii) Procuring, providing or possessing such a document;</p> <p>(c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in subparagraph (b) of this paragraph or any other illegal means.</p> <p>2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:</p> <p>(a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;</p> <p>(b) Participating as an accomplice in an offence established in accordance with paragraph 1 (a), (b) (i) or (c) of this article and, subject to the basic concepts of its legal system, participating as an accomplice in an offence established in accordance with paragraph 1 (b) (ii) of this article;</p> | Prosecution: 1.A, 1.B, 1.D 2.A, D and E; 3.A, D and E 4.A and C; 5.A and B; 16.C and D | 10, 11, 13, 47, 103, 152 |

| | Part two. Framework for Action (Table and section) | Part one. Introduction to the Framework (Paragraph number) |
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| <p>(c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.</p> <p>3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as aggravating circumstances to the offences established in accordance with paragraph 1 (a), (b) (i) and (c) of this article and, subject to the basic concepts of its legal system, to the offences established in accordance with paragraph 2 (b) and (c) of this article, circumstances:</p> <p>(a) That endanger, or are likely to endanger, the lives or safety of the migrants concerned; or</p> <p>(b) That entail inhuman or degrading treatment, including for exploitation, of such migrants.</p> <p>4. Nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.</p> | | |
| II. Smuggling of migrants by sea | | |
| <p>Article 7</p> <p>Cooperation</p> <p>States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.</p> | <p>Cooperation: 13(a).A, B and D</p> <p>Prevention: 2(a).D</p> | 162, 196 |
| <p>Article 8</p> <p>Measures against the smuggling of migrants by sea</p> <p>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.</p> <p>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:</p> <p>(a) To board the vessel;</p> <p>(b) To search the vessel; and</p> <p>(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.</p> | <p>Protection: 11(a).A and C; 12.B and C</p> <p>Prevention: 2(a).A, B and D</p> <p>Cooperation: 13(a).A and C; 13(b).C and D</p> | 138, 162, 196 |

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| <p>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.</p> <p>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.</p> <p>5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.</p> <p>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.</p> <p>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.</p> | | |
| <p>Article 9</p> <p>Safeguard clauses</p> <p>1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:</p> <p>(a) Ensure the safety and humane treatment of the persons on board;</p> <p>(b) Take due account of the need not to endanger the security of the vessel or its cargo;</p> <p>(c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;</p> <p>(d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.</p> <p>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.</p> | <p>Protection: 12.A, B and C</p> <p>Prevention: 2(a).B; 2(b).B, C and D</p> <p>Cooperation: 13(a).A</p> | 162, 196 |

| | Part two. Framework for Action (Table and section) | Part one. Introduction to the Framework (Paragraph number) |
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| <p>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:</p> <p>(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or</p> <p>(b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.</p> <p>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.</p> | | |
| III. Prevention, cooperation and other measures | | |
| <p>Article 10</p> <p>Information</p> <p>1. Without prejudice to articles 27 and 28 of the Convention, States Parties, in particular those with common borders or located on routes along which migrants are smuggled, shall, for the purpose of achieving the objectives of this Protocol, exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information on matters such as:</p> <p>(a) Embarkation and destination points, as well as routes, carriers and means of transportation, known to be or suspected of being used by an organized criminal group engaged in conduct set forth in article 6 of this Protocol;</p> <p>(b) The identity and methods of organizations or organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol;</p> <p>(c) The authenticity and proper form of travel documents issued by a State Party and the theft or related misuse of blank travel or identity documents;</p> <p>(d) Means and methods of concealment and transportation of persons, the unlawful alteration, reproduction or acquisition or other misuse of travel or identity documents used in conduct set forth in article 6 of this Protocol and ways of detecting them;</p> <p>(e) Legislative experiences and practices and measures to prevent and combat the conduct set forth in article 6 of this Protocol; and</p> <p>(f) Scientific and technological information useful to law enforcement, so as to enhance each other's ability to prevent, detect and investigate the conduct set forth in article 6 of this Protocol and to prosecute those involved.</p> | Cooperation: 9.A, C and D | |

| | Part two. Framework for Action (Table and section) | Part one. Introduction to the Framework (Paragraph number) |
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| 2. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use. | | |
| <p>Article 11</p> <p>Border measures</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> | <p>Prevention: 3.A and B; 4(a).A, B and C; 4(b).B</p> <p>Cooperation: 10.A, C and D</p> | 135, 192 |
| <p>Article 12</p> <p>Security and control of documents</p> <p>Each State Party shall take such measures as may be necessary, within available means:</p> <p>(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</p> <p>(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.</p> | <p>Prevention: 5(a).A and B; 5(b).B</p> | 171 |

| | Part two. Framework for Action (Table and section) | Part one. Introduction to the Framework (Paragraph number) |
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| <p>Article 13</p> <p>Legitimacy and validity of documents</p> <p>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.</p> | Prevention: 6.A-C | 171 |
| <p>Article 14</p> <p>Training and technical cooperation</p> <p>1. States Parties shall provide or strengthen specialized training for immigration and other relevant officials in preventing the conduct set forth in article 6 of this Protocol and in the humane treatment of migrants who have been the object of such conduct, while respecting their rights as set forth in this Protocol.</p> <p>2. States Parties shall cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the conduct set forth in article 6 of this Protocol and to protect the rights of migrants who have been the object of such conduct. Such training shall include:</p> <ul style="list-style-type: none"> (a) Improving the security and quality of travel documents; (b) Recognizing and detecting fraudulent travel or identity documents; (c) Gathering criminal intelligence, relating in particular to the identification of organized criminal groups known to be or suspected of being engaged in conduct set forth in article 6 of this Protocol, the methods used to transport smuggled migrants, the misuse of travel or identity documents for purposes of conduct set forth in article 6 and the means of concealment used in the smuggling of migrants; (d) Improving procedures for detecting smuggled persons at conventional and non-conventional points of entry and exit; and (e) The humane treatment of migrants and the protection of their rights as set forth in this Protocol. <p>3. States Parties with relevant expertise shall consider providing technical assistance to States that are frequently countries of origin or transit for persons who have been the object of conduct set forth in article 6 of this Protocol. States Parties shall make every effort to provide the necessary resources, such as vehicles, computer systems and document readers, to combat the conduct set forth in article 6.</p> | Protection: 3.D; 9(a).D Prevention: 7.A, C and D; 8.A Cooperation: 11.A; 12.A | 173, 175, 193, 194 |

| | Part two. Framework for Action (Table and section) | Part one. Introduction to the Framework (Paragraph number) |
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| <p>Article 15</p> <p>Other prevention measures</p> <p>1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that the conduct set forth in article 6 of this Protocol is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to the migrants concerned.</p> <p>2. In accordance with article 31 of the Convention, States Parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling victim to organized criminal groups.</p> <p>3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.</p> | <p>Prevention: 9(a).A and B; 10(a).A and C</p> <p>Cooperation: 14.A and C; 15.A and C</p> | 178-180 |
| <p>Article 16</p> <p>Protection and assistance measures</p> <p>1. In implementing this Protocol, each State Party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.</p> <p>2. Each State Party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.</p> <p>3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.</p> <p>4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.</p> <p>5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State Party shall comply with its obligations under the Vienna Convention on Consular Relations, where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.</p> | <p>Protection: 1.A and B; 2.A and B; 4.A and B; 5.A, B, D and E; 6(a).A, C and D; 6(b).B and C; 7(a).A, B and C; 8(a).A and C; 8(b).B, C and D; 8(c).B; 16.A and B</p> <p>Prevention: 1.B</p> | 47, 107, 108, 113, 115, 117, 125, 129, 152, 158 |

| | Part two. Framework for Action (Table and section) | Part one. Introduction to the Framework (Paragraph number) |
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| <p>Article 17</p> <p>Agreements and arrangements</p> <p>States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:</p> <p>(a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or</p> <p>(b) Enhancing the provisions of this Protocol among themselves.</p> | Cooperation: 16.A-D | |
| <p>Article 18</p> <p>Return of smuggled migrants</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>6. States Parties may cooperate with relevant international organizations in the implementation of this article.</p> <p>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.</p> | Cooperation: 17.A and B; 18.A and C; 19.A and C; 20.A-C | |

| | Part two. Framework for Action (Table and section) | Part one. Introduction to the Framework (Paragraph number) |
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| 8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol. | | |
| IV. Final provisions | | |
| Article 19 | | |
| Saving clause | | |
| 1. Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein. | Prosecution: 3.B and D; 14.C; 16.B | 47, 51, 52, 109, 129, 145 |
| 2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are the object of conduct set forth in article 6 of this Protocol. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination. | Protection: 1.B and C; 2.B; 3.A-D; 5.D; 6(a).C; 6(b).C; 8(a).A and B; 8(b).B and C; 9(a).C; 9(b).B; 10.A-C; 12.B and C; 13(a).A-C; 13(b).B; 14.B Prevention: 1.B; 2(a).D; 2(b).B; 4(b).B and C; 9(b).C Cooperation: 1.C; 5.B; 10.C; 12.C | |
| Article 20 | | |
| Settlement of disputes | | |
| 1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation. | | |
| 2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court. | | |
| 3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation. | | |
| 4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations. | | |
| Article 21 | | |
| Signature, ratification, acceptance, approval and accession | | |
| 1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002. | | |

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.
 3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
 4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.
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Article 22

Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.
 2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.
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Article 23

Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.
 2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.
 3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.
 4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.
 5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.
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Article 24**Denunciation**

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.
 2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.
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Article 25**Depositary and languages**

1. The Secretary-General of the United Nations is designated depositary of this Protocol.
 2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
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IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.

Annex II

Resources

A. Resources to support prosecution

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E. Legal instruments and related documents

1. International and regional crime instruments

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Official Journal of the European Communities, C 078, 30 March 1995
Available from [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41995A0330\(01\):EN:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41995A0330(01):EN:HTML).

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Council of Europe, *European Treaty Series*, No. 112
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General Assembly resolution 40/34, annex

Available from www.un.org/documents/resga.htm.

Directive 2009/52/EC of the European Parliament and of the Council of the European Union of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

Official Journal of the European Union, L 168, 30 June 2009

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Council of Europe, *European Treaty Series*, No. 24

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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, 16 July 2002, section II.G. Penalties

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United Nations, *Treaty Series*, vol. 2241, No. 39574

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Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

United Nations, *Treaty Series*, vol. 2237, No. 39574

Available from www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.

Rome Statute of the International Criminal Court

United Nations, *Treaty Series*, vol. 2187, No. 38544

Available from <http://untreaty.un.org/cod/icc/statute/romefra.htm>.

Second Additional Protocol to the European Convention on Extradition

Council of Europe, *European Treaty Series*, No. 98

Available from <http://conventions.coe.int/Treaty/en/Treaties/Html/098.htm>.

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United Nations, *Treaty Series*, vol. 2349, No. 42146

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

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United Nations, *Treaty Series*, vol. 2225, No. 39574

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2. Human rights instruments and related documents

African Charter on Human and Peoples' Rights

United Nations, *Treaty Series*, vol. 1520, No. 26363

Available from www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Banjul%20Charter.pdf.

African Commission on Human and Peoples' Rights, rules of procedure

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United Nations, *Treaty Series*, vol. 1144, No. 17955

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American Declaration of the Rights and Duties of Man

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Available from <http://www1.umn.edu/humanrts/instreet/loas2005.html>.

Commission on Human Rights resolution 2005/47 of 19 April 2005 on the human rights of migrants (See *Official Records of the Economic and Social Council, 2005, Supplement No. 3* and corrigenda (E/2005/23 and Corr.1 and 2), chap. II, sect. A)

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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

United Nations, *Treaty Series*, vol. 1465, No. 24841

Available from www.hrweb.org/legal/cat.html.

Convention on the Elimination of All Forms of Discrimination against Women

United Nations, *Treaty Series*, vol. 1249, No. 20378.

Available from www.un-documents.net/cedaw.htm.

Convention on the Rights of Persons with Disabilities

General Assembly resolution 61/106, annex I

Available from www.un.org/disabilities/convention/conventionfull.shtml.

Declaration on the Elimination of Violence against Women

General Assembly resolution 48/104

Available from [www.unhchr.ch/huridocda/huridoca.nsf/\(symbol\)/a.res.48.104.en](http://www.unhchr.ch/huridocda/huridoca.nsf/(symbol)/a.res.48.104.en).

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Council of Europe, *European Treaty Series*, No. 126
Available from www.hrcr.org/docs/Eur_Conv_Torture/euro TORT.html.

European Convention for the Protection of Human Rights and Fundamental Freedoms
Council of Europe, *European Treaty Series*, No. 5
Available from <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>.

European Convention on the Legal Status of Migrant Workers
Council of Europe, *European Treaty Series*, No. 93
Available from <http://conventions.coe.int/Treaty/en/Treaties/Html/093.htm>.

General Assembly resolution 59/194 on protection of migrants, adopted on 20 December 2004
Available from www.un.org/documents/resga.htm.

International Convention on the Elimination of All Forms of Racial Discrimination
United Nations, *Treaty Series*, vol. 660, No. 9464
Available from www.hrcr.org/docs/CERD/cerd.html.

International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families
United Nations, *Treaty Series*, vol. 2220, No. 39481
Available from <http://www2.ohchr.org/english/law/cmw.htm>.

International Covenant on Civil and Political Rights
General Assembly resolution 2200 A (XXI), annex
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International Covenant on Economic, Social and Cultural Rights
General Assembly resolution 2200 A (XXI), annex
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Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
General Assembly resolution 57/199, annex
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Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights
Available from www.achpr.org/english/_info/court_en.html.

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

Universal Declaration of Human Rights
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Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Convention No. 182), of the International Labour Organization

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Convention on the Rights of the Child

United Nations, *Treaty Series*, vol. 1577, No. 27531

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Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

United Nations, *Treaty Series*, vol. 2173, No. 27531

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Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

United Nations, *Treaty Series*, vol. 2171, No. 27531

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Available from www.ilo.org/ilolex/cgi-lex/convde.pl?R190.

United Nations Rules for the Protection of Juveniles Deprived of their Liberty

General Assembly resolution 45/113, annex

Available from http://www2.ohchr.org/english/law/res45_113.htm.

Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights

A/CONF.157/24 (Part I), chap. III

Available from <http://www2.ohchr.org/english/law/pdf/vienna.pdf>.

4. Migration law instruments

Association of Southeast Asian Nations Declaration on the Protection and Promotion of the Rights of Migrant Workers

Available from www.aseansec.org/19264.htm.

Bangkok Declaration on Irregular Migration

A/C.2/54/2, annex

Available from www.baliprocess.net/files/ConferenceDocumentation/Bangkok%20Declaration%20on%20Irregular%20Migration%20sgd%20230499.pdf.

Declaration on the human rights of individuals who are not nationals of the country in which they live

General Assembly resolution 40/144, annex

Available from www.un.org/documents/ga/res/40/a40r144.htm.

5. International Labour Organization instruments

Convention concerning Basic Aims and Standards of Social Policy, 1962 (Convention No. 117)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C117.

Convention concerning Forced or Compulsory Labour, 1930 (Convention No. 29)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C029.

Convention concerning Freedom of Association and Protection of the Right to Organise, 1948 (No. 87)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C087.

Convention concerning Migration for Employment (Revised), 1949 (Convention No. 97)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C097.

Convention concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers, 1975 (Convention No. 143)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C143.

Convention concerning Minimum Age for Admission to Employment, 1973 (Convention No. 138)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C138.

Convention concerning Minimum Wage Fixing, with Special Reference to Developing Countries, 1970 (Convention No. 131)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C131.

Convention concerning Private Employment Agencies, 1997 (Convention No. 181)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C181.

Convention concerning the Abolition of Forced Labour, 1957 (Convention No. 105)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C105.

Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949 (Convention No. 98)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C098.

Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (Convention No. 182)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C182.

Convention concerning the Protection of Wages, 1949 (Convention No. 95)

Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C095.

Convention concerning the Repatriation of Seafarers (Revised), 1987 (Convention No. 166)
Available from www.ilo.org/ilolex/cgi-lex/convde.pl?C166.

Recommendation concerning Cooperation between States relating to the Recruitment, Placing and Conditions of Labour of Migrants for Employment, 1939 (Recommendation No. 62)
Available from www.ilo.org/ilolex/cgi-lex/convde.pl?R062.

Recommendation concerning Discrimination in Respect of Employment and Occupation, 1958, (Recommendation No. 111)
Available from www.ilo.org/ilolex/cgi-lex/convde.pl?R111.

Recommendation concerning Migrant Workers, 1975 (Recommendation No. 151)
Available from www.ilo.org/ilolex/cgi-lex/convde.pl?R151.

Recommendation concerning Migration for Employment (Revised), 1949 (Recommendation No. 86)
Available from www.ilo.org/ilolex/cgi-lex/convde.pl?R086.

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

Recommendation concerning the Protection of Migrant Workers in Underdeveloped Countries and Territories, 1955 (Recommendation No. 100)
Available from www.ilo.org/ilolex/cgi-lex/convde.pl?R100.

Recommendation concerning the Repatriation of Seafarers, 1987 (Recommendation No. 174)
Available from www.ilo.org/ilolex/cgi-lex/convde.pl?R174.

6. Humanitarian law instruments

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949
United Nations, *Treaty Series*, vol. 75, No. 970
Available from www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/fe20c3d903ce27e3c125641e004a92f3

Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949
United Nations, *Treaty Series*, vol. 75, No. 971
Available from www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/44072487ec4c2131c125641e004a9977

Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949
United Nations, *Treaty Series*, vol. 75, No. 973
Available from www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/6756482d86146898c125641e004aa3c5.

Geneva Convention relative to the Treatment of Prisoners of War, of 12 August 1949
United Nations, *Treaty Series*, vol. 75, No. 972
Available from www.icrc.org/web/eng/siteeng0.nsf/html/genevaconventions.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)
United Nations, *Treaty Series*, vol. 1125, No. 17512
Available from www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/f6c8b9fee14a77fdc125641e0052b079.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)
United Nations, *Treaty Series*, vol. 1125, No. 17513
Available from www.icrc.org/ihl.nsf/7c4d08d9b287a42141256739003e636b/d67c3971bcff1c10c125641e0052b545.

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III)
United Nations, *Treaty Series*, vol. 2404, No. 43425.
Available from www.icrc.org/ihl.nsf/FULL/615?OpenDocument

7. Instruments on refugees and statelessness

1967 Protocol relating to the Status of Refugees
United Nations, *Treaty Series*, vol. 606, No. 8791
Available from www.unhcr.org/refworld/docid/3ae6b3ae4.html.

Cartagena Declaration on Refugees
Available from www.unhcr.org/basics/BASICS/45dc19084.pdf.

Convention on the Reduction of Statelessness
United Nations, *Treaty Series*, vol. 989, No. 14458
Available from www.unhcr.org/refworld/docid/3ae6b39620.html.

Convention relating to the Status of Refugees
United Nations, *Treaty Series*, vol. 189, No. 2545
Available from www.unhcr.org/refworld/docid/3be01b964.html.

Convention relating to the Status of Stateless Persons
United Nations, *Treaty Series*, vol. 360, No. 5158
Available from <http://www2.ohchr.org/english/law/stateless.htm>.

Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa of 1969
United Nations, *Treaty Series*, vol. 1001, No. 14691.
Available from www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Refugee_Convention.pdf.

8. International development instruments

Declaration on Social Progress and Development

General Assembly resolution 2542 (XXIV)

Available from <http://www2.ohchr.org/english/law/pdf/progress.pdf>

Declaration on the Right to Development

General Assembly 41/128, annex

Available from <http://www2.ohchr.org/english/law/pdf/rtd.pdf>

United Nations Millennium Declaration

General Assembly resolution 55/2. (See, in particular, paras. 9, 25 and 26 of the Declaration.)

Available from www.un.org/millennium/declaration/ares552e.pdf.

9. International law of the sea

International Convention for the Safety of Life at Sea

Available from www.imo.org/About/Conventions/ListOfConventions/Pages/Default.aspx.

International Convention on Maritime Search and Rescue

Available from www.imo.org/About/Conventions/ListOfConventions/Pages/Default.aspx.

United Nations Convention on the Law of the Sea

United Nations, *Treaty Series*, vol. 1833, No. 31363

Available from www.un.org/Depts/los/convention_agreements/convention_overview_convention.htm.

10. Vienna Convention on Consular Relations

Vienna Convention on Consular Relations

United Nations, *Treaty Series*, vol. 596, No. 8638

Available from www.unhcr.org/refworld/docid/3ae6b3648.html.

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