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**Good practices in cooperating with the private
sector to prevent and combat the smuggling of
migrants**

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Background paper prepared by the Secretariat

I. Introduction

1. The present background paper was prepared by the Secretariat to facilitate the discussions of the Working Group on the Smuggling of Migrants at its ninth meeting. It sets out a series of issues that the Working Group may wish to address in the course of its deliberations, provides background information and policy considerations relating to public-private partnerships to prevent the smuggling of migrants, to detect and investigate cases while protecting the rights of smuggled persons, and to provide rescue and assistance services to migrants and refugees in distress. It also contains a discussion of challenges that might arise under such partnerships, including the need to uphold the human rights of smuggled persons and not to adversely affect migrants through those partnerships. Lastly, it provides a list of specific resources and tools that States may use to further develop related responses to the smuggling of migrants.

II. Issues for discussion

2. The Working Group may wish to discuss the following questions in its analysis of good practices in cooperating with the private sector to counter the smuggling of migrants:

(a) What successful examples of public-private partnerships can Member States provide in addressing migrant smuggling cases? With which private actors should partnerships be explored and developed at the national and transnational levels?

(b) What are the current challenges and lessons learned in partnering with the private sector when it comes to preventing and combating the smuggling of migrants while protecting the rights of smuggled migrants and refugees?

* [CTOC/COP/WG.7/2022/1](#).



(c) How can Member States best place the protection, safety and rights of refugees and migrants at the core of anti-smuggling work or partnerships involving the private sector? What needs to be done so that actions undertaken under such partnerships target smugglers only and do not have adverse effects on smuggled persons or on migration?

(d) How can existing partnerships with the financial sector be improved to make anti-smuggling investigations more effective?

(e) In which areas of the private sector could partnerships be fostered to improve the protection of and assistance to smuggled migrants, as well as their subsequent integration in the countries where they settle?

(f) What needs to be changed in legislation and policies in order to ensure that private actors who carry out search and rescue operations involving migrants in distress without financial or material benefit are not considered smugglers and not criminalized or penalized for their assistance, but rather regarded as partners?

(g) How can the United Nations best support the efforts of Member States to identify, promote and replicate successful anti-smuggling public-private partnerships?

3. Regarding partnerships with the private sector in preventing and combating the smuggling of migrants while protecting the rights of smuggled migrants and refugees, the Working Group might wish to recommend the following possible actions by States parties:

(a) Replicate best practice models of cooperation with the financial sector, which focus on the effective follow-up of migrant smuggling reports from financial intelligence units, include frequent meetings and well-established communication channels and ensure the active disruption of identified risks;

(b) Include the perspective of the private sector in regular capacity-strengthening activities for law enforcement, including with regard to information-sharing requirements and requests to financial institutions, such as subpoena forms;

(c) Strengthen partnerships with media companies by engaging with journalists reporting on migration-related issues, including on the root causes of smuggling, and by making existing migration reporting guidelines more accessible to journalists;

(d) Under a broader partnership with commercial and humanitarian vessels involved in search and rescue operations, establish a regular exchange of information with vessels to strengthen cooperation; ensure that alerts and information on the situation of migrants and refugees in distress are shared in a timely manner with all vessels; provide capacity-building to vessels' crews to ensure that search and rescue operations will be undertaken in compliance with international human rights and refugee law, upholding in particular the principle of non-refoulement and enabling vessels to ensure the safety and dignity of all rescued persons; periodically review search and rescue policies, manuals and practices to ensure consistency with the effective respect, protection and fulfilment of the human rights of rescued migrants and refugees; and better implement manuals and guidelines on preparedness for search and rescue;

(e) Create task forces involving law enforcement authorities, international organizations and information and communications technology firms to facilitate regular contact and exchange of information, thereby replicating successful models created to combat other crimes.

III. Overview of issues and guidance for response

4. Migrant smuggling is becoming increasingly professionalized. Faced with evolving obstacles and coronavirus disease (COVID-19) containment measures, migrants and refugees have been increasingly compelled to rely on smugglers to cross borders, and smugglers have in turn increased their fees in many instances.¹ To gain access to a wider range of clients, exchange information efficiently and increase anonymity, smugglers have also increasingly resorted to digital tools at every step of the migrant smuggling process.² Some smuggling networks have thus benefited from mobility restrictions and access to digital tools and made large profits. In parallel, smuggled migrants and refugees continue to be exposed to aggravated forms of smuggling involving violence, abuse and even death.³

5. Consequently, States and regional entities have regularly underlined the need for relevant State actors to enhance cooperation between jurisdictions and to strengthen partnerships with the private sector, civil society and international organizations in order to better detect, investigate and prevent the smuggling of migrants while protecting the rights of smuggled migrants and refugees.

6. In article 31 of the United Nations Convention against Transnational Organized Crime, States parties are encouraged to strengthen cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry, in order to combat transnational organized crime more effectively. This is echoed in Goal 17, target 17, of the 2030 Agenda for Sustainable Development, in which States are called upon to “encourage and promote effective public, public-private and civil society partnerships, building on the experience and resourcing strategies of partnerships”. Furthermore, objective 9 of the Global Compact for Safe, Orderly and Regular Migration highlights the importance for States to take measures to prevent the smuggling of migrants along the migration cycle, in partnership with other States and relevant stakeholders, including by cooperating in the fields of development, public information and justice.⁴

Scope of the paper

7. Among the many different forms of partnerships to fight crime and the smuggling of migrants in particular, the present paper is focused on partnerships between the State and the private sector. Public-private partnerships have long been positively acknowledged and encouraged by Member States and various stakeholders. However, in searching globally for examples of successful partnerships against the smuggling of migrants, it becomes clear that such partnerships are still rare and limited in scale and scope. Some forms of cooperation cannot be considered public-private partnerships. For example, the cooperation of commercial enterprises with law enforcement authorities during investigations related to cases of migrant smuggling on the basis of regulatory power or following a court order does not constitute a real public-private partnership. Other types of cooperation with the private sector include the provision of services by private actors, for example in the context of border management and in migrant detention centres. In the latter case, for example, private security companies engaged by States carry out security functions at migrant detention centres. Such privatization of core State functions through

¹ Mixed Migration Centre, “Financing of human smuggling in West and North Africa” (March 2022), p. 1.

² European Union Agency for Law Enforcement (Europol), *European Migrant Smuggling Centre: 6th Annual Report* (Luxembourg, Publications Office of the European Union, 2022), p. 9.

³ For more information on this topic, see United Nations Office on Drugs and Crime (UNODC), “COVID-19 and the smuggling of migrants: a call for safeguarding the rights of smuggled migrants facing increased risks and vulnerabilities” (Vienna, 2021).

⁴ General Assembly resolution [73/195](#), annex, para. 25 (f).

service contracts and their specific challenges in terms of human rights do not constitute partnerships as dealt with in the present paper.⁵

8. However, several instances of successful proactive public-private partnerships can be identified, together with additional areas where such prospective partnerships could be beneficial. The sections that follow showcase selected good and promising practices to combat the smuggling of migrants while protecting the rights of smuggled persons, in order to support the discussions of the Working Group, in which it is hoped that further existing examples will be identified.

A. Good and promising practices in partnerships with the private sector

9. Private sector partners can potentially play a key role in supporting efforts to prevent, identify and report cases of migrant smuggling, as well as to rescue, assist and protect smuggled migrants and refugees. In addition, it should be stressed that the private sector can play an essential role in the integration of irregular migrants into the regular labour market and the reintegration or relocation of smuggled migrants returned to their countries of origin or to third countries, through the provision of employment, education and other relevant services. Finally, cooperation with the private sector can be very valuable for the creation of alternative livelihoods for impoverished communities that tend to engage in or enable migrant smuggling, by providing those communities with other sources of income.

10. The private sector includes a myriad of enterprises that are active in a wide range of areas. However, several categories of private sector entities, such as technology companies, private law firms, media companies, private and merchant vessels, and financial service providers, may be particularly relevant to the investigation and prosecution of cases of migrant smuggling, as well as the rescue and protection of and assistance to smuggled migrants and refugees.

11. In establishing or strengthening partnerships with private sector stakeholders to combat migrant smuggling, due consideration should always be given to any adverse effects that those partnerships might have on the individuals who are the object of smuggling. States have an obligation to respect, protect and fulfil human rights. Partnerships between law enforcement institutions and private companies should be limited to the detection and investigation of smuggling activities and not be aimed at preventing migration. Under such partnerships, a key imperative should be to avoid causing harm to smuggled migrants and refugees.

12. The examples of partnerships identified for the present background paper have been categorized, and each category is presented in a separate section of the paper. In section III.B, the paper addresses public-private partnerships to better detect, investigate and prosecute migrant smuggling, including the financial aspects of the crime, and related challenges. Section III.C contains a discussion of partnerships with the private sector aimed at ensuring the protection of smuggled migrants in distress. Section III.D provides an examination of ways to use partnerships that increase assistance to and support the integration of smuggled migrants into society, through better access to legal services and the labour market and the creation of a positive narrative on migration in the media. Section III.E addresses partnerships for the further improvement of the overall framework of migration in order to prevent the smuggling of migrants.

⁵ See Manfred Nowak, *Human Rights or Global Capitalism: The Limits of Privatization* (Philadelphia, University of Pennsylvania Press, 2017).

B. Public-private partnerships for the detection, investigation and prosecution of migrant smuggling, with due respect for the rights of smuggled persons

1. Partnerships with technology companies

13. The use of information and communications technology throughout the migrant smuggling cycle, from the initial advertisement to the payment of smuggling fees at the end of the journey, has grown exponentially in recent years.

14. As in the case of other crimes committed using information and communications technology, the strengthening of partnerships between law enforcement authorities and technology companies can aid in the detection, disruption and prosecution of migrant smuggling activities.

2. Increased use of digital technology by smugglers

15. An analysis by the European Union Agency for Law Enforcement Cooperation (Europol) and the European Border and Coast Guard Agency (Frontex) indicates that the online advertisement of smuggling services is becoming increasingly professional, with criminals sharing maps, pricing, testimonials on successful operations, videos and advertisements for their services on social media platforms such as Facebook, Instagram, TikTok and YouTube.⁶

16. While smugglers advertise their services online as widely as possible, subsequent communication with their clients is usually carried out in encrypted communication applications in order to escape surveillance and ensure security. A wide variety of common applications, including FaceTime, Messenger, Signal, Skype, Telegram, WeChat and WhatsApp, are used in such cases.⁷ With end-to-end encryption, investigators face difficulties in accessing related communications, which are reportedly erased immediately by smugglers.

17. Similarly, for financial investigations, the full encryption of key information on how proceeds are collected, transferred and laundered creates investigative and evidential obstacles for law enforcement authorities. The Financial Action Task Force has observed, however, that it is not yet proven that information and communications technology is widely used by smugglers to facilitate payment and to launder proceeds.⁸

18. Frontex has documented other technology-related practices that are frequently used to reduce the risk of detection, such as smugglers' insistence on live, on-camera conversations with their prospective clients, using social media applications or platforms, in order to monitor their clients' environment and ensure that they are, for example, not in police custody or otherwise putting the smugglers at risk.⁹

19. Partnerships with those companies could help to secure evidence, for instance, with the sharing of IP addresses, profiles and relevant personal information by technology companies with law enforcement authorities. However, while several technology companies have established specific portals for law enforcement requests, developed related guidelines, such as those for Facebook and Messenger,¹⁰ and/or cooperated with law enforcement in specific investigations, including on cases of child sexual abuse, technology companies have been generally reluctant to provide authorities with their users' personal information. The messaging application Telegram, for example, notes on its website that, so far, they have never responded to

⁶ Frontex and Europol, "Digitalisation of migrant smuggling: digital tools and apps enabling facilitation" (July 2021), p. 6.

⁷ Ibid., p. 8.

⁸ Financial Action Task Force, *Money Laundering and Terrorist Financing Risks Arising from Migrant Smuggling* (Paris, 2022), p. 43.

⁹ Ibid.

¹⁰ See Facebook, "Information for law enforcement authorities", available at www.facebook.com/safety/groups/law/guidelines/.

data disclosure requests.¹¹ The company SuperVPN also states that it does not share personal data with law enforcement.¹² In addition, some companies are prohibited by law from providing users' information to foreign law enforcement agencies.¹³ While some large messaging services, such as Signal,¹⁴ are designed not to store or collect sensitive data, or to do so only for a limited period of time, many such companies simply cannot access the content of end-to-end encrypted conversations.

20. Overall, the use of social media by smuggling networks has therefore played a significant role in increasing not only the volume but also the effectiveness of smuggling operations, making the crime more difficult to investigate and prosecute. The effective misuse of information and communications technology by smugglers has enabled them to escape detection by law enforcement. Partnerships with technology companies hosting social media platforms and messaging services would be beneficial but have so far been limited. Cooperation seems to take place mostly in response to regulatory requirements and court orders rather than in a proactive, partnership-based manner. Technology companies appear to cooperate more closely and actively with law enforcement in the investigation of other crimes, such as online child trafficking for sexual exploitation.¹⁵ In this regard, it would be important to establish incentives for partnerships between law enforcement and technology companies aimed at also improving the monitoring, detection and reporting of smuggling-related cases, while taking into account the need to always respect human rights (CTOC/COP/WG.7/2020/3, para. 51).

3. “Do no harm” principle, human rights and the right to privacy

21. The increased use of information technology is, of course, not only limited to smugglers. Likewise, people on the move are increasingly using social media, both at the pre-departure stage to get into contact with smugglers and during their journeys to receive key information on migration routes from smugglers. Refugees and migrants broadly benefit from digital tools.¹⁶ In several social media groups, for instance, refugees and migrants can verify the reliability and reputation of some smuggling networks and share information on certain smuggling services, including with regard to safety, routes and fees. Furthermore, smugglers use maps and YouTube tutorials to guide their clients on their journeys. Those videos enable refugees and migrants to find essential details on the location of, inter alia, non-governmental organizations, refugee camps, Wi-Fi hotspots and shelters.¹⁷

22. As some large social network companies start developing algorithms and other machine learning tools to automatically detect suspicious online exchanges related to migrant smuggling in order to remove or block such content, mitigating measures will need to be taken to reduce the risks of harm to refugees and migrants. In addition, concerns have been raised that the target of such data collection is the migrant rather than the smuggler.¹⁸ In that regard, close partnerships with States, civil society and

¹¹ Telegram states that the company would only disclose IP addresses and phone numbers to the authorities upon receipt of a court order confirming terrorism suspicion, but that “so far, this has never happened”. See Telegram, “Telegram privacy policy”. Available at <https://telegram.org/privacy>.

¹² Frontex and Europol, “Digitalisation of migrant smuggling”, p. 34.

¹³ This is the case, for example, with the social network “Odnoklassniki”, based in the Russian Federation.

¹⁴ In its terms and privacy policy, Signal states the following: “Signal is designed to never collect or store any sensitive information. Signal messages and calls cannot be accessed by us or other third parties because they are always end-to-end encrypted, private, and secure.” See <https://signal.org/legal>.

¹⁵ For examples of such partnerships, see CTOC/COP/WG.4/2021/2, paras. 31–34.

¹⁶ See also Angeliki Dimitriadi, “Countering smuggling of migrants through social media monitoring: looking for a needle in a digital haystack”, in *Beyond Networks, Militias and Tribes: Rethinking EU Counter-Smuggling Policy and Response*, Euro-Mediterranean Study Commission Policy Study, No. 19 (Barcelona, Spain, European Institute of the Mediterranean, 2021), pp. 36–38.

¹⁷ Frontex and Europol, “Digitalisation of migrant smuggling”, p. 11.

¹⁸ See Dimitriadi, “Countering smuggling of migrants through social media monitoring”, p. 41.

international organizations could contribute to developing risk assessment methods and mitigating measures so that people on the move are not harmed or otherwise exposed to violations. Furthermore, a more established partnership between technology companies and law enforcement authorities could help to secure and preserve evidence of smuggling and thus support investigations.

23. However, the utilization and storage of personal data gathered through the surveillance of discussion forums and private groups should be strictly regulated in order to respect human rights and the right to privacy. The background paper on successful strategies concerning the use of technology, including information and communications technology, to prevent and investigate the smuggling of migrants and to mount a robust response to the increasing use of cyberspace by criminal groups, prepared for the seventh meeting of the Working Group on the Smuggling of Migrants, underlined the need to ensure that sensitive data are securely stored and that access to such data is restricted to authorized persons only (CTOC/COP/WG.7/2020/3, para. 55). The sharing of data must take privacy and confidentiality standards into account. Ensuring human rights safeguards in all investigatory stages should be a primary concern. In the course of criminal investigations and in public-private partnerships, it is essential to ensure consistency with human rights, fairness, accountability and transparency standards, in line with national and international legal frameworks.

4. Partnerships with financial institutions to investigate migrant smuggling

24. A major component of the effective detection and investigation of migrant smuggling cases is the investigation of illicit financial flows. Strong partnerships with private sector financial institutions, such as banks and money or value transfer services, are widely recognized as helpful in this regard and already exist in many countries.

25. However, financial flows from migrant smuggling are particularly difficult to detect. According to a 2022 report by the Financial Action Task Force,¹⁹ operational models of migrant smuggling are reportedly still characterized as primarily using cash transfers. Financial flows are mostly channelled through the informal money transfer system known as hawala.²⁰ The prevailing use of this method of transferring funds (often cash) generated from the smuggling of migrants between jurisdictions makes it extremely difficult for law enforcement agencies to detect illicit financial flows. Other methods include the physical transportation of funds by cash couriers or “money mules”, while well-regulated banks or money transfer services are often avoided. The distribution of money within smuggling networks is generally hidden from smuggled migrants and refugees. Consequently, investigative authorities often obtain only fragmentary findings concerning the distribution of smuggling fees.²¹

26. Proceeds are ultimately integrated into financial systems using a variety of techniques, including “smurfing”, in which large numbers of small amounts are deposited into bank accounts in order to avoid suspicion.²² For these reasons, countries surveyed in the Financial Action Task Force study reported that less than 5 per cent of migrant smuggling investigations resulted in money-laundering investigations.²³

27. Stronger partnerships with the private sector have been identified as essential to improving financial investigations of migrant smuggling cases. Promising practices,

¹⁹ Financial Action Task Force, *Money Laundering and Terrorist Financing Risks*, p. 4.

²⁰ In the Financial Action Task Force report, the hawala system is described as follows: the payment for guaranteed smuggling is made prior to the journey. To that end, the migrants or their relatives visit hawala offices, which receive the payment for the smugglers and hold the funds in a fiduciary capacity. The disbursement of the funds to the smugglers by the hawala office takes place only once the smuggling has been successfully concluded (p. 22 of the report).

²¹ Financial Action Task Force, *Money Laundering and Terrorist Financing Risks*, p. 33.

²² *Ibid.*, p. 26.

²³ *Ibid.*, p. 30.

though limited in number, have emerged in this regard. Financial institutions, in particular banks and money or value transfer services, have a crucial role to play in providing accurate suspicious transaction reports that can help authorities to profile the financial behaviour of migrant smugglers.²⁴

28. The importance of providing financial institutions with guidance and information on the specific methods that smugglers use to transfer and conceal proceeds has been highlighted as an efficient way to identify and tackle financial flows.²⁵ Reports and information from law enforcement authorities can be fed into algorithms developed by financial institutions and used to create an automated system of detection of suspicious transactions and effect the immediate disruption of related financial transactions. In addition, through the use of contacts in the private sector, competent authorities can undertake more extensive and more efficient enquiries to develop intelligence and evidence, which assists in the identification of individuals involved in the commission of migrant smuggling offences.²⁶ Furthermore, some financial institutions have also participated in specific transnational operations to combat migrant smuggling.²⁷

29. In 2019, the financial intelligence unit of Germany set up a public-private partnership between public authorities and several major German banks, called the Anti Financial Crime Alliance. The aim of the Alliance is to strengthen strategic cooperation to combat money-laundering. The United Nations Office on Drugs and Crime (UNODC) has collaborated with the Alliance to create an algorithm for developing financial behaviour profiling and identifying financial transactions that could be linked to trafficking in persons and the smuggling of migrants. As part of that collaboration, the possibility of using data derived from the algorithm for an ongoing UNODC regional study on illicit financial flows stemming from migrant smuggling and trafficking in persons is being explored.

30. Several initiatives have been launched to help improve the partnership between public authorities and the private sector in financial investigations related to migrant smuggling cases. However, it is important to note that the privacy and human rights concerns that apply to the establishment of partnerships with financial institutions are similar to those that apply to technology companies. In the 2011 Guiding Principles on Business and Human Rights, it is clearly stated, under guiding principle 14, that the responsibility for respecting human rights applies fully and equally to all business enterprises regardless of their size, sector, operational context, ownership and structure. That includes the entire spectrum of financial institutions.²⁸ This implies that, in their cooperation with law enforcement, financial institutions should be mindful not to harm smuggled migrants or any other persons in the development of machine learning methods, the sharing of information and participation in anti-smuggling operations.

5. Partnerships with transportation companies to detect migrant smuggling

31. A major aspect of the smuggling of migrants is the transportation of people, which may range from crossing international borders to much longer journeys spanning from the country of origin to the country of destination. Smugglers offer diverse transportation means, whether at sea (e.g. dinghies, cargo ships and yachts), by air or on land (e.g. private or rented cars, taxis, lorries and trains). Owing to the

²⁴ Ibid., p. 5.

²⁵ Ibid., p. 31.

²⁶ Ibid., p. 40.

²⁷ In one example among many, during an operation coordinated by INTERPOL, 2,350 bank accounts linked to illicit proceeds of online financial crime were blocked (International Criminal Police Organization (INTERPOL), “More than 1,000 arrests and USD 27 million intercepted in massive financial crime crackdown”, 26 November 2021).

²⁸ Office of the United Nations High Commissioner for Human Rights (OHCHR), “OHCHR response to request from BankTrack and OECD Watch for advice regarding the application of the UN Guiding Principles on Business and Human Rights where private sector banks act as nominee shareholders”, 30 August 2021, p. 2.

importance of this aspect, article 11 of the Protocol provides that State parties are to adopt measures to prevent means of transport operated by commercial carriers from being used in the commission of migrant smuggling, which includes 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. In the case of a violation of this obligation, sanctions are to be imposed.

32. So far, partnerships with private transportation companies have been limited, but promising practices have been developed. For example, States have cooperated with air carriers to prevent or detect smuggled individuals, including by enhancing the detection of fraudulent documents.²⁹ In that regard, UNODC has organized activities in the context of the national training programme on preventing and combating migrant smuggling in Mexico (SOMMEX) initiative. In 2019, more than 150 participants from the justice, customs, migration and police sectors, as well as airlines and airports in the Americas and Europe, were invited by UNODC, in partnership with Europol, and with the support of the Secretariat of Foreign Affairs and the Secretariat of the Interior of Mexico, to discuss trends, challenges and lessons learned in combating migrant smuggling by air.³⁰ The participants observed that the airlines and the cooperation among them and with airport authorities were decisive in preventing new cases, including by detecting document fraud. In the absence of compliance by airlines with measures to detect and prevent migrant smuggling, States have at times adopted carrier sanctions. In the long term, however, partnerships can lead to more results and better protection of smuggled persons.

C. Public-private partnerships in the protection of smuggled persons

1. Partnerships with technology companies for the protection of smuggled migrants and refugees

33. Public-private partnerships can also play a role in the protection of smuggled migrants and refugees. Technology companies in particular can contribute to the prevention of violations and other aggravated forms of the crime.

34. As noted above, people on the move can use social media to gain access to essential information concerning, inter alia, the reputation of smugglers, fraudulent offers and the failure of journeys. Research has shown that refugees and migrants wishing to use the services of smugglers offered in Facebook groups can share and receive information about smuggling services by interacting with the smugglers and by reading the positive or negative feedback written by smuggled clients in the same groups.³¹ That information can significantly inform the decision whether to use specific smuggling services and proposed itineraries.

35. Partnerships with technology companies and other operators of social networks in the private sector could foster the development of applications, websites and communication materials to support people on the move by providing them with relevant and even vital information on access to first aid and dangers along migration routes, thereby reducing the risks of violence, abuse and even death.³² For example, some applications support migrant workers by providing information about the work of recruitment agencies, including whether they are suspected of trafficking in persons (CTOC/COP/WG.4/2021/2, para. 28). Another application, among many that illustrate the potential of applications and other online platforms, is RedSafe,

²⁹ See also CTOC/COP/WG.7/2019/3, para. 3, and *Global Study on Smuggling of Migrants 2018* (United Nations publication, Sales No. E.18.IV.9), p. 31.

³⁰ UNODC, “Preventing and combatting smuggling of migrants by air in focus at Conference co-hosted by UNODC”, 13 June 2019.

³¹ For more information on this topic, see Zoe Roberts, “Information exchange between smugglers and migrants: an analysis of online interactions in Facebook groups”, MPhil dissertation, University of Cambridge, Institute of Criminology, 2017.

³² *Global Study on Smuggling of Migrants 2018*, p. 12.

developed by the International Committee of the Red Cross, which provides displaced persons with reliable information on humanitarian assistance. Content of a similar nature could be developed and/or made available by technology companies in partnership with relevant State agencies and international organizations.

2. Partnerships to enhance search and rescue operations

36. Every year, thousands of people die at sea during their migration journeys. For many years, merchant vessels have played a key role in preventing fatalities through search and rescue operations, which have saved the lives of countless refugees and migrants in distress. The majority of the people intercepted on the seas are migrants travelling without documentation, often facilitated by smugglers.³³

37. Core provisions on search and rescue at sea and the duty to assist persons in distress at sea are set out in several key instruments. Under article 98, paragraph 1, of the United Nations Convention on the Law of the Sea,³⁴ every State must require the master of a ship flying its flag to render assistance to any person found at sea in danger of being lost and to proceed to the rescue of persons in distress. That Convention provides the basis for the regulation of merchant vessels' duty to provide assistance. In addition, States parties to the International Convention for the Safety of Life at Sea³⁵ and the International Convention on Maritime Search and Rescue³⁶ are required to provide "a place of safety" as soon as reasonably practicable.³⁷ The place must be selected in compliance with human rights and the principle of non-refoulement.

38. Under the International Convention on Maritime Search and Rescue, the obligation to rescue extends to any person in distress at sea, regardless of the nationality or status of such person or the circumstances in which that person is found.³⁸ In addition, the International Maritime Organization clarified in its 2004 Guidelines on the Treatment of Persons Rescued at Sea that "prompt assistance provided by ships at sea is an essential element of global [search and rescue] services; therefore it must remain a top priority for shipmasters, shipping companies and flag States."³⁹ Moreover, the Guiding Principles on Business and Human Rights provide guidance on the responsibility of private vessels to respect the human rights of migrants and refugees at sea.⁴⁰

39. International law does not differentiate between merchant and non-merchant vessels, but rather between State-owned and private vessels, meaning that, for the purposes of the law of the sea, non-governmental organizations' rescue vessels are subject to the same requirements as all other private vessels. Therefore, the obligation to rescue persons in distress at sea applies to all shipmasters at sea.⁴¹

40. Lastly, article 16 of the Smuggling of Migrants Protocol addresses measures of protection and assistance to smuggled migrants. In particular, it is stated that each State party is to afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of smuggling.

³³ UNODC, *Combating Transnational Organized Crime Committed at Sea: Issue Paper* (Vienna, 2013), p. 18.

³⁴ United Nations, *Treaty Series*, vol. 1833, No. 31363; entered into force on 16 November 1994.

³⁵ United Nations, *Treaty Series*, vol. 1184, No. 18961; adopted on 1 November 1974, entered into force on 25 May 1980.

³⁶ United Nations, *Treaty Series*, vol. 1405, No. 23489; adopted on 27 April 1979, entered into force on 22 June 1985.

³⁷ For more information on this topic, see UNODC, *Combating Transnational Organized Crime Committed at Sea*, p. 22.

³⁸ International Convention on Maritime Search and Rescue, annex, para. 2.1.10. A similar provision is included in regulation 33 of the International Convention for the Safety of Life at Sea.

³⁹ Resolution MSC.167(78), annex 34, para. 3.1.

⁴⁰ See part II of the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework.

⁴¹ Jean-Pierre Gauci, "When private vessels rescue migrants and refugees: a mapping of legal considerations" (London, British Institute of International and Comparative Law, 2020), p. 6.

41. As detailed in the present section, undertaking rescue operations is therefore a requirement under international law. Vessels may, however, face difficulties in such operations, and those difficulties could be mitigated through partnerships with States.

Obstacles and challenges

42. Obstacles to search and rescue operations and impediments to disembarkation have been observed in many places, and administrative and criminal cases have been initiated against vessels, thus diminishing rescue capability.⁴² However, objective 8 of the Global Compact for Migration stresses the importance of ensuring that the provision of assistance of an exclusively humanitarian nature for migrants is not considered unlawful. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has reported a significant decline in rescues by private merchant and commercial vessels in the central Mediterranean Sea since 2018, and concerns have been expressed that shipmasters could be prosecuted if they engaged in the rescue of migrants.⁴³ During expert consultations held in the development of a related UNODC issue paper, a number of fishers noted that they were reluctant to rescue migrants in distress at sea for fear of being targeted as migrant smugglers,⁴⁴ despite the fact that such conduct could be contrary to article 3 (a) of the Smuggling of Migrants Protocol.

43. On a related note, the Special Rapporteur on the human rights of migrants recommended in 2017 that States train local fishers in search and rescue operations without the risk of retaliation or harassment for being considered accessories to smuggling operations ([A/HRC/35/25/Add.2](#), para. 117).

44. Public-private partnerships could therefore help in the establishment of a stronger cooperation framework in this essential area and in ensuring more certain and effective communication between merchant and non-governmental vessels, patrolling vessels and other relevant coastal authorities.

45. In addition, stronger partnerships could support the implementation of existing internal guidelines on the standard of conduct expected of vessels and their crews in search and rescue operations. Such conduct includes, for example, respect in all circumstances for the principle of non-refoulement, which has been breached, for example, by private commercial vessels in recent cases.⁴⁵ Furthermore, the obligation to rescue involves being prepared to carry out rescue operations and to address the associated risks (i.e. boats with high gunwales, bad weather, lack of medical supplies or water, etc.). Robust partnerships could therefore contribute to enhancing the capacity of each company to deal with rescue operations in a way that is compliant with international human rights and refugee law and to developing the skills required to do so.

D. Public-private partnerships for enhanced assistance and integration of smuggled and other migrants into society

46. Public-private partnerships can play a role in the provision of assistance to smuggled migrants and refugees and support their integration into society. Private law firms and medical offices, private sector employers and the media in particular can play a role in overall efforts to foster safe, regular and orderly migration.

⁴² Detailed in [CTOC/COP/WG.7/2021/2](#), para. 14. See also Gauci, “When private vessels rescue migrants and refugees”, p. 6.

⁴³ OHCHR, “‘Lethal disregard’: search and rescue and the protection of migrants in the central Mediterranean Sea” (May 2021), p. 18.

⁴⁴ UNODC, *Transnational Organized Crime in the Fishing Industry* (Vienna, 2011), p. 63.

⁴⁵ For example, in Italy in 2021, the Ordinary Court of Naples issued a judgment against the captain of the *Asso 28*, a private vessel, for returning 101 people rescued at sea to Libya in 2018. See, for example, Al Jazeera, “Italian captain given jail term for returning migrants to Libya”, 15 October 2021.

1. Partnerships with private law firms

47. During initial assessments and the identification of the needs of smuggled migrants, private law firms cooperating with States can help to provide services to migrants, such as in-depth analyses of their legal needs and appropriate responses. In addition, such firms can support smuggled migrants who would like to regularize their immigration status.⁴⁶ That can include support in applying for visas, residency, citizenship, asylum or another special temporary or permanent immigration status. Smuggled and other irregular migrants have the right to free legal aid, including legal advice, assistance and representation⁴⁷ throughout the process of applying for changes to their immigration status, including advice on cooperating with law enforcement and the justice system in exchange for temporary or permanent immigration status. Furthermore, private law firms can offer legal representation to migrant victims of crime.⁴⁸

2. Partnerships with private sector employers

48. Successful anti-smuggling strategies should be embedded in a wider effort to manage migration. Under objective 5 of the Global Compact for Migration, it is recommended that Member States review and revise existing options and pathways for regular migration, with a view to optimizing skills-matching in labour markets and addressing demographic realities and development challenges and opportunities, in consultation with the private sector and other relevant stakeholders. Partnerships with private sector employers could create employment for smuggled migrants who are in the process of being regularized, or migrants returned or relocated, who need employment and livelihoods in order to sustain themselves and their families, so that they do not use the services of smugglers to cross borders.

49. Some initiatives have been successfully undertaken, such as the opening of a pineapple factory operated by a business cooperative consisting of returnees and unemployed youth, and by the private sector, under the lead of the International Organization for Migration (IOM).⁴⁹ Other examples of successful partnerships with corporations and industries exist with regard to the labour integration of refugees and migrants.⁵⁰ The resulting support for the sustainable integration of migrants into communities contributes to safe and regular migration and should be pursued with the overall aim of enabling integrated migration.

50. Such partnerships with employers can contribute to enhancing the availability of pathways for regular migration and developing a comprehensive strategy to regulate international migration, in line with the commitments of States under the 2030 Agenda for Sustainable Development, if prospective migrants can access such employment opportunities in a safe and regular manner without having to resort to the services of smugglers to reach their countries of destination. The creation of pathways for former unaccompanied children and in some cases for undocumented youth to pursue education, vocational training or apprenticeships was noted as a significant advance in France, Germany, Italy and Switzerland.⁵¹

⁴⁶ International Organization for Migration (IOM), *IOM Handbook on Protection and Assistance for Migrants Vulnerable to Violence, Exploitation and Abuse* (Geneva, 2019), p. 89.

⁴⁷ United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (General Assembly resolution 67/187, annex), principle 10.

⁴⁸ Ibid.

⁴⁹ IOM, “Farmers, private sector and returnees join forces to launch pineapple factory, foster reintegration in Nigeria”, 21 February 2020.

⁵⁰ See, for example, the partnership between the Government of Chile and the cosmetics manufacturer Natura to integrate migrants and refugees into the labour market, with the support of IOM and UN-Women Chile (IOM, “Strengthening Venezuelans’ labour integration in the private sector in Chile”, 19 February 2019).

⁵¹ See Organization for Security and Cooperation in Europe, Office for Democratic Institutions and Human Rights, “Regularization of migrants in an irregular situation in the OSCE region: recent developments, points for discussion and recommendations” (August 2021), p. 13. See also the Preventing Irregular Child Migration in Central America and Mexico (PICMCA) project, in

51. As noted above, partnerships with the private sector could also be developed in order to create alternative livelihoods for impoverished communities engaging, or at risk of engaging, in migrant smuggling, by providing those communities with other sources of income.⁵²

3. Partnerships with the press and media companies

52. The private sector not only has a role to play in providing livelihood opportunities and services to migrants and communities along migratory routes; it can also help to influence social behaviours, norms and practices that are critical for integrating migrants and combating xenophobia and discrimination.⁵³ For example, print and other media companies (e.g. television and radio) are particularly important because they play a critical role in shaping perceptions of migration and influencing public opinion. As the United Nations University has argued, “value-laden pejorative and stereotypical migration coverage tends to foster xenophobic sentiments, increase the support of anti-immigrant parties and alter migrant groups’ integration experiences. Conversely, fair, precise, impartial and respectful representations of migrants raise civic awareness”.⁵⁴ To some extent, partnerships with the media could be expanded to foster a more positive perception of migration and ensure ethical reporting on migration.

E. Public-private partnerships to prevent the smuggling of migrants

53. Several partnerships could be explored not only to detect and combat migrant smuggling but also to prevent the crime from occurring.

54. Some migrants and refugees widely advertise their successful smuggling operations online.⁵⁵ Smugglers also advertise their services through success stories and pictures, which might contribute to influencing hesitant potential customers who are considering migrating with the help of smugglers. How then can States more effectively raise awareness regarding the real risks associated with smuggling for individuals?

55. Under objective 3 of the Global Compact for Migration, States are called upon to organize awareness-raising events and pre-departure orientation training in countries of origin, in cooperation with, inter alia, the private sector, to promote safe, orderly and regular migration, as well as to highlight the risks associated with irregular and unsafe migration.

56. Counter-narratives on social media have been implemented through a number of awareness-raising campaigns in recent years in order to prevent potential migrants and refugees from embarking on hazardous journeys. However, those campaigns have often delivered mixed results,⁵⁶ and a recent survey showed that social media content influenced only roughly 5 per cent of migrants’ decisions to migrate.⁵⁷

which potential employers and local authorities cooperated to address the root causes of irregular migration (María Isabel López, “Addressing the root causes of irregular child migration in Central America and Mexico”, 25 October 2021).

⁵² See, for example, the European Union-funded project “Plan of action for rapid economic impact in Agadez”, which aimed to offer alternatives to illegal services to smugglers and communities benefiting from migrant smuggling in the Niger.

⁵³ IOM, *IOM Handbook on Protection and Assistance for Migrants*.

⁵⁴ Camille Desmarès, “Addressing xenophobia: representations of migration and the role of the media” (n.p., United Nations University, Institute on Globalization, Culture and Mobility, 2017), p. 5.

⁵⁵ BBC News, “Are migrant YouTubers influencing others to travel to the EU?”, 20 February 2021.

⁵⁶ European Migration Network, “The use of social media in the fight against migrant smuggling” (September 2016). See also [CTOC/COP/WG.7/2020/3](#), para. 13.

⁵⁷ Andrew Fallone, “‘Here we go again’: misleading European Union communications on human smuggling”, European University Institute, 16 June 2021.

IV. Conclusion

57. The smuggling of migrants poses challenges that require all stakeholders, whether from the public or private sector, across various countries, to gather resources. Smuggling networks have quickly adapted to the restrictions imposed as a result of the COVID-19 pandemic and have continued to smuggle people across borders, including by leveraging the opportunities offered by digital tools. Public-private partnerships are highly relevant to detecting and investigating migrant smuggling, but also to protecting smuggled individuals and assisting them in situations of distress.

58. Partnerships with the private sector can take many shapes, from changing narratives related to smuggling and migration in the press to detecting suspicious financial transactions related to smuggling. Although several examples of promising and/or existing good practices could be identified in the context of the present background paper, overall, public-private partnerships against migrant smuggling are considerably less developed than for other crimes. New partners and sectors could be explored further by Member States in order to more efficiently combat the crime and protect and assist smuggled migrants.

59. The fight against the smuggling of migrants must, however, be placed in the broader framework of international migration policies, since migrants often resort to smuggling services owing to a lack of alternatives for safe and regular migration. The 5,795 documented deaths of irregular migrants globally in 2021⁵⁸ is a reminder that States should not only combat the crime of migrant smuggling through partnerships, but also offer alternatives to those illegal services to people on the move (CTOC/COP/WG.7/2021/2, paras. 3–4). The enhancement of measures and policies contributing to increasing pathways for regular migration,⁵⁹ including through strengthened partnerships with private sector employers, would contribute to reducing migrant smuggling.

Previous recommendations of the Working Group on related topics

60. The Working Group on the Smuggling of Migrants has, to date, formulated approximately 200 recommendations in which it advised States parties on the implementation of the Smuggling of Migrants Protocol, including five recommendations related to the topic of the present background paper.

61. In examining practical measures and other aspects aimed at preventing and combating migrant smuggling more effectively, the past recommendations of the Working Group⁶⁰ have emphasized that States parties:

(a) In preventing and combating the smuggling of migrants, are invited to take into account the experience of relevant stakeholders, including the private sector, academia and civil society;

(b) Should seek to establish relationships with relevant law enforcement and criminal justice practitioners, commercial carriers and private industry, in order to effectively counter the smuggling of migrants;

(c) Should strengthen their capacity to launch and conduct proactive financial investigations to seize and recover criminal assets in smuggling of migrants cases. Their efforts should include ensuring better and more systematic links between financial intelligence units, law enforcement agencies and the judiciary, in order to

⁵⁸ See the Missing Migrants Project of IOM. Available at <https://missingmigrants.iom.int/data>.

⁵⁹ See also Mixed Migration Centre and Danish Refugee Council, “Countering human smuggling: no silver bullet for safer mobility – evidence based recommendations towards a protection-sensitive approach to actions against human smuggling” (July 2021).

⁶⁰ Each of the recommendations listed can be found in UNODC, *Smuggling of Migrants: Compendium and Thematic Index of Recommendations, Resolutions and Decisions* (Vienna, 2021), with the exception of the final recommendation, which is available in document [CTOC/COP/WG.7/2020/4](#).

counter the financing of organized criminal groups. To this aim, States should also step up their cooperation with financial institutions such as banks, credit transfer service providers and credit card issuers;

(d) Should consider using an appropriate multidisciplinary approach, which comprises different kinds of interventions for police, prosecutors, border guards, non-governmental organizations and the private sector, to prevent and combat the smuggling of migrants;

(e) Should encourage and expand effective partnerships between relevant sectors and stakeholders, including international and regional organizations, civil society, the private sector and academia, to enhance research, innovation and the use of technology to counter the smuggling of migrants.

62. Furthermore, in the compendium and thematic index prepared by the Secretariat, which includes the recommendations adopted by the Working Group at its first six meetings, guidance can be found under the following topics: assistance to smuggled migrants, border control and management, children (unaccompanied/separated children), criminal justice system (financial investigations), financial institutions, migration opportunities, responders (civil society), and United Nations Office on Drugs and Crime (UNODC) and Secretariat.

V. Key tools and recommended resources

63. The selected tools and resources listed below are available on the UNODC website. A comprehensive overview of all resources relating to the smuggling of migrants is available at www.unodc.org/unodc/en/human-trafficking/resources.html.

UNODC Observatory on Smuggling of Migrants

64. The UNODC Observatory on Smuggling of Migrants is a pilot project aimed at assessing the characteristics, drivers and impacts of the smuggling of migrants in rapidly changing contexts. The Observatory collects and disseminates data, information and analysis on the smuggling of migrants. The information is gathered through regular field research in countries of origin, transit and destination, and from people on the move, law enforcement authorities, civil society and other key actors. It is complemented by targeted surveys among people on the move and migrant smugglers in countries of origin and transit.

65. The information and analysis provided is essential to better understanding the phenomenon of smuggling of migrants, better preventing and combating such smuggling and related crimes, and protecting the human rights of people who are smuggled. It is available at www.unodc.org/res/som/index.html.

Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response (2021)

66. The UNODC publication entitled *Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response*, on aggravated forms of smuggling of migrants and related gender dimensions, analyses the circumstances and experiences of smuggled migrants during the migration journey, including repeated episodes of sexual violence, abuse and exploitation, in particular among migrant women. The publication is aimed at identifying gender dynamics and providing guidance to Member States with a view to increasing protection and access to justice for smuggled migrants and strengthening overall responses to aggravated forms of smuggling of migrants, including their appropriate criminalization.

Global Study on Smuggling of Migrants 2018

67. The *Global Study on Smuggling of Migrants 2018*, the first such study published by UNODC, shows that migrant smuggling routes affect every part of the world. The

study is based on an extensive review of existing data and literature and provides insight into trends, smuggling routes and profiles of smugglers and those smuggled.

UNODC Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants (2021)

68. The *UNODC Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants* was developed under the framework of the Global Action against Trafficking in Persons and the Smuggling of Migrants (GLO.ACT), a joint initiative of the European Union and UNODC that is being implemented in partnership with IOM. It is a collection of tools to help practitioners understand and incorporate human rights and gender equality into criminal justice responses to the smuggling of migrants and trafficking in persons.

Smuggling of Migrants Knowledge Portal and case law database

69. In October 2016, UNODC launched, as a component of the Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal, the Smuggling of Migrants Knowledge Portal. The portal includes a case law database, a database of legislation and an annotated bibliography providing information on key articles and publications on the smuggling of migrants. The case law database is aimed at enabling judges, prosecutors, policymakers, the media, researchers and other interested parties to broaden their knowledge of how various States use their laws to combat the smuggling of migrants, with the ultimate goal of enhancing the global criminal justice response.

The Concept of “Financial or Other Material Benefit” in the Smuggling of Migrants Protocol: Issue Paper (2017)

70. The study entitled *The Concept of “Financial and Other Material Benefit” in the Smuggling of Migrants Protocol: Issue Paper* examines legislation and case law among a broadly representative group of States in order to gain a comparative perspective on how the “financial and other material benefit” element of the international definition of the smuggling of migrants has been understood and applied. It gives particular attention to the experiences and views of practitioners involved in investigating and prosecuting smuggling of migrants cases. The principal purpose of the study is to contribute to more effective and consistent interpretation and implementation of the international legal obligations that States have assumed through their ratification of or accession to the Smuggling of Migrants Protocol.
