

16 November 2015

English only

Working Group on the Smuggling of Migrants

Vienna, 18-20 November 2015

Item 2 of the provisional agenda*

Smuggling of migrants by sea**Report on the Trans-regional Training Workshop on Preventing and Combating the Smuggling of Migrants by Sea Affecting the Mediterranean Region****Non-paper submitted by Italy******I. Objective**

1. The United Nations Office on Drugs and Crime (UNODC), in partnership with the International Institute of Higher Studies in Criminal Sciences (ISISC), held a Trans-regional Training Workshop to prevent and combat the smuggling of migrants, focusing on the Mediterranean region, from 14 to 16 October 2015 in Syracuse, Italy. This workshop is the second of a series of regional workshops on smuggling of migrants by sea, following the regional workshop for the Caribbean, Central America and Mexico, held in Panama in March 2015.¹
2. The Workshop aimed at bringing together States of origin, transit and destination in the broader Mediterranean region to take stock of current challenges in addressing migrant smuggling, exchange good practices and come up with concrete follow-up actions to enhance their efforts to dismantle transnational smuggling networks while protecting the human rights of migrants.
3. The workshop raised awareness on the principles and rules governing issues such as jurisdiction at sea, rescue at sea, assistance to smuggled migrants, and trained participants on detecting, investigating and prosecuting the smuggling of migrants while upholding the rights of migrants.

* CTOC/COP/WG.7/2015/1.

** The present document is reproduced in the form in which it was received — Arab and French versions of the report are available upon request to UNODC or can be downloaded at: www.unodc.org/unodc/en/human-trafficking/workshop-in-syracuse.html.

¹ www.unodc.org/ropan/en/IndexArticles/Trata_de_Personas/March2015/smuggling-of-migrants-regional-workshop.html.



4. The Trans-regional Training Workshop was jointly organized by UNODC's Global Programme against the Smuggling of Migrants and the Global Maritime Crime Programme, within UNODC Strategy for the Building of Capacity in North African Countries through and Integrated Response and with the financial support of the Government of Italy and the European Union, and the support of the UNODC Regional Offices for the Middle East and North Africa, for East Africa and for West and Central Africa.

II. Outcome

5. The workshop gathered 20 front line officers, criminal justice practitioners and policy makers from Egypt, Eritrea, Lebanon, Mali, Morocco, Niger, Nigeria, Somalia, Sudan, Tunisia and Turkey. A dozen observers, including representatives of the local authorities, the Italian Ministries of Interior as well as of Foreign Affairs and International Cooperation, the European Commission and Malta attended the workshop and participated in the debates.

6. The workshop was delivered by experts of the Human Trafficking and Migrant Smuggling Section and of the Global Maritime Crime Programme of UNODC, together with resource persons from the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration, the European Union Military Operation in the Southern Central Mediterranean (EUNAVFOR MED), FRONTEX, Save the Children and the Norwegian Ship Owners' Association, as well as an Italian Judge, two Italian Prosecutors, an Italian Navy officer and a Nigerian law enforcement expert. Delivery methods included presentations, group work, plenary discussions, case studies, exercises and presentations from participants.

7. The three-day Trans-regional Training Workshop was very successful thanks to the overall level and diversity of expertise and the active engagement of participants who shared insights, experiences and views throughout the workshop. The workshop was held in three languages: Arabic, English and French.

8. The workshop met its main objectives and participants' expectations, including the identification of challenges and needs, an increased understanding of the international framework governing the States' response to migrant smuggling, and the exchange of good practices to efficiently respond to migrant smuggling at national and regional levels.

9. Participants acknowledged their change in perception of the crime of smuggling of migrants; in particular they highlighted the urgent need to balance the authoritarian response with humanitarian imperatives as the fight against criminal networks and the protection of the rights of migrants are two sides of the same coin. They also showed a strong interest for long term responses that include development programmes to address root causes of migration.

10. A package of material was disseminated among participants. It included, among others, the Basic Training Manual on Smuggling of Migrants² (A, E, F), the

² www.unodc.org/unodc/en/human-trafficking/electronic-basic-training-manual-on-investigating-and-prosecuting-smuggling-of-migrants.html.

Issue paper on Smuggling of Migrants by Sea³ (E; executive summary: A, F), and the UNTOC and supplementing Protocols⁴ (A, E, F).

III. Sessions

A. Welcome address

11. Mr. Giovanni Pasqua, Director General, ISISC, Dr. Armando Gradone, Prefect of Syracuse, and Ms. Alessandra Piermattei, Italian Ministry of Foreign Affairs and International Cooperation, opened the event, together with Mr. Masood Karimipour, Representative, UNODC Regional Office for the Middle East and North Africa, and Mr. Jose Vila del Castillo, Representative, UNODC Regional Office for Eastern Africa. Speakers stressed the challenges posed by the unprecedented numbers of persons smuggled by sea in the Mediterranean, and insisted on the need for a coordinated response of the international community to investigate and prosecute organized criminal groups engaging in smuggling as well as to ensure full protection of the rights of those smuggled by sea.

B. Setting the scene: Smuggling of migrants affecting the Mediterranean region

1. Overview

12. Morgane Nicot, Crime Prevention and Criminal Justice Officer, UNODC, introduced the points for discussion presented in UNODC Issue paper on Smuggling of Migrants by Sea, that constituted the canvass for the agenda of the training workshop. She presented the issues to be considered during the workshop, which related to: encountering migrant smuggling at sea, investigation and prosecution, prevention, cooperation. Ms. Nicot stressed the need to focus on the involvement of organized criminal groups in the smuggling of migrants by sea, to extend investigations to land-based smugglers and to ensure international cooperation to that effect, as well as the paramount importance of protecting the lives and rights of the persons who are the object of smuggling.

2. Regional trends

13. Simona Moscarelli, Project Coordinator, IOM Italy, delivered a presentation on the trends and patterns of migratory flows on land, before reaching embarkation points. The smuggling routes and modi operandi on land are shifting, adapting to the response of States to the phenomenon. The “step by step” journey during which migrants stop on the way to their final destination to collect money for the next stage of their trip was noted, as well as the difficulties and dangers to which persons object of smuggling are exposed during their journey at land, including violence and abduction on the part of smugglers. The lack of data on persons that perish in the

³ www.unodc.org/unodc/en/human-trafficking/electronic-basic-training-manual-on-investigating-and-prosecuting-smuggling-of-migrants.html.

⁴ www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf.

desert before reaching the shores of the Mediterranean was also noted. The presentation also stressed the absence of regular migratory channels as a cause for migrants and refugees having to resort to smugglers.

14. Miguel Angelo Nunes Nicolau, Coordinating Officer, and Ennio Schettini, Operational Analyst, both from FRONTEX, outlined the mandate and current operations of FRONTEX at the sea borders of European Union, and presented up-to-date data on the persons irregularly crossing the external borders of the European Union, focusing on the sea borders. The unprecedented numbers of smuggled migrants that currently cross the Mediterranean was noted. While the Greek islands of the Eastern Mediterranean were affected by the largest number of arrivals at the time of the workshop, the Central Mediterranean route continued to witness the highest rate of fatalities. The ever higher number of passengers transported by smuggling networks on increasingly unseaworthy boats demonstrates that the only concern of smugglers is to maximize their financial gains. The overloading and unseaworthiness of boats engaging in smuggling and the overall conditions on board were highlighted as the main reasons of deaths at sea.

C. Presentations

15. Morgane Nicot, Crime Prevention and Criminal Justice Officer, UNODC introduced the background of the Trans-regional Training Workshop and reviewed the expectations of participants:

- (a) Become familiar with the Protocol governing smuggling of migrants;
- (b) Learn about the legal framework on the smuggling of migrants;
- (c) Learn about sanctions against the perpetrators;
- (d) Identify operational challenges and capacity-building needs;
- (e) Be empowered as actors fighting smuggling networks;
- (f) Enhance regional cooperation and information sharing;
- (g) Understand the reasons behind the smuggling of migrants and review alternative measures to keep potential migrants in the countries of origin.

D. Legal framework and jurisdiction issues

1. Smuggling of Migrants Protocol

16. The session lead by Morgane Nicot, Crime Prevention and Criminal Justice Officer, UNODC, aimed at reviewing States Parties' obligations under the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol) supplementing the United Nations Convention against Transnational Organized Crime (UNTOC). Time was dedicated in particular to examine the definitions set in the Protocol (art. 3), and the criminalization requirements (art. 6). The participants reviewed the constitutive elements of smuggling of migrants ("with the financial or other material benefit element"), of enabling stay and document fraud, as well as aggravating circumstances in smuggling cases. The differences between trafficking in persons and smuggling of migrants were also analysed.

Participants were given the chance to reflect on the legislation of their respective countries and present its main elements and differences with respect to the international legal framework on smuggling of migrants throughout the workshop. Case studies were also shared with participants.

2. Law of the sea

17. Giuseppe Sernia, Programme Officer, Global Maritime Crime Programme, UNODC, introduced the participants to key principles of International Law of the Sea. The presentation of maritime zones and corresponding rules on the exercise of law enforcement jurisdiction highlighted the challenges linked with exercising jurisdiction on foreign vessels and vessels without nationality or assimilated in international waters, in particular where indicted offenders are not nationals of the prosecuting State.

3. Issues of jurisdiction at sea

18. Simona Ragazzi, Judge at the Court of Catania, Italy, delivered a presentation on the main issues arising around exercising jurisdiction on the high seas. It was noted that smuggling activities in the Central Mediterranean are usually completed in international waters as a result of rescue operations, thus posing challenges in ascertaining State jurisdiction to prosecute the smugglers. Italian courts affirmed their jurisdiction to prosecute and punish criminal conduct by holding that the smugglers that complete their operations on the high seas should be liable for smuggling offences, since they take intentionally advantage of the rescue teams that carry out the final part of the transportation to the shore under the threat of imminent danger to the lives of the passengers.

19. The participants were given the opportunity to discuss solutions that would be adopted under their national legislation in similar situations through an exercise. The exercise referred to a 2015 decision of the Italian Supreme Court accepting Italian jurisdiction in a case where a smuggling vessel without nationality was intercepted on the high seas and the suspected smugglers on board were not Italian nationals. Judge Ragazzi discussed with the participants the legal arguments used by the Italian Supreme Court, including the interaction of provisions of the International Convention for the Safety of Life at Sea (SOLAS) (regulation 33, chapter V), the Search and Rescue Convention (SAR), the United Nations Convention of the Law of the Sea (UNCLOS), article 15 of the UNTOC and relevant provisions of Italian law. It was also noted that enforcement powers on the high seas against vessels without nationality had been carried out by Italy on the basis of article 110 of the UNCLOS and article 8 para. 7 of the Smuggling of Migrants Protocol. Security Council Resolution 2240/2015 addressing enforcement jurisdiction on vessels that are reasonably believed to engage in the smuggling of migrants off the coast of Libya was also extensively discussed.

4. Recommended steps

- (a) Ratify or accede to the Smuggling of Migrants Protocol;
- (b) Align national legislations with the Smuggling of Migrants Protocol requirements;

- (c) Make smuggling a penal matter, not only an immigration matter (criminalize the smuggling of migrants);
- (d) Ensure that penalties for migrant smuggling correspond to those for serious criminal offences;
- (e) Add migrant smuggling to the predicate offences for money-laundering;
- (f) Designate national authorities to submit and receive requests under article 8 of the Smuggling of Migrants Protocol, and include them in UNODC Directory of Central National Authorities;
- (g) Take into consideration good practices in jurisprudence to establish jurisdiction in migrant smuggling cases, including on the High Seas.

E. Detecting the smuggling of migrants, including at sea

1. From a commercial vessels' perspective

20. Line Ollestad, Advisor, Norwegian Ship Owners Association, introduced the theme of support by private vessels to detection, rescue and disembarkation of smuggled migrants on the high seas. It was noted that commercial vessels have a legal and moral responsibility to assist those in need at sea, and that they would continue to do so although ships and crew are not equipped for large scale rescue operations, which are a physical and psychological strain on the crew. Adequate search and rescue and law enforcement capacity need to be present in the areas where the migratory flows are largest. Crew cannot legally or for any practical reasons differentiate those they rescue, whether they are refugees, migrants or smugglers. It was also noted that rapid and safe disembarkation is essential, as it is safe neither for the crew nor for those rescued to remain on the ship. In this regard, place of disembarkation can be a challenge if a ship is asked to return those rescued to the country of embarkation, as such return may result in a violation of the principle of non-refoulement.

2. From a military perspective

21. Rear Admiral Bléjean, Deputy Commander, EUNAVFOR MED (Operation Sophia), presented the mandate of the newly created EUNAVFOR MED, an EU military operation in Southern Central Mediterranean to contribute to disrupt the business model of migrant smugglers and human traffickers. He analysed the current trends, legal framework and potential critical points of its operations. Data and Intelligence gathered by EUNAVFOR MED on smuggling of migrants by sea, including through interviews with migrants, during phase 1 of the operation allowed to better understand the roles on board vessels engaging on smuggling of migrants. Such data will inform operations during phase 2 in international waters and assist in achieving the goal of effectively intervening on the maritime smuggling routes. The strong connection between organized crime and migrant smuggling, however, requires deeper intelligence work, to be carried out in collaboration with transit countries. EUNAVFOR MED operation Sophia conducts rescue operations, within the context of SAR, SOLAS chapter V regulation 33 and UNCLOS article 98, in compliance with the principles of human rights law. Security Council Resolution 2240/2015 adopted on 9 October 2015 in connection to the currently

on-going, more operational, phase 2 in International Waters of the EUNAVFOR MED was also commented upon. The interpretation of the requirement to make good faith efforts to obtain the consent of a flag State before inspecting flagged boats off the coast of Libya was discussed, in relation to the potential absence of reaction of the flag State to such request. Disembarkation and its connection with the issue of jurisdiction to prosecute offenders was also addressed.

3. Detection on land

22. Aondoaver Kuttuh, Director of Training and Manpower Development, Nigeria National Agency for the Prohibition of Trafficking in Persons, provided advice on how to identify smugglers and organized crime groups, the roles of various actors and the sources of profit. He recommended to gather information and use intelligence on networks, documents used, transportation, routes, profiles of migrants, financial transactions, and transit accommodation to inform law enforcement operations.

4. Challenges

(a) Responding to requests made under *Chapter II — Smuggling of Migrants by Sea* of the Smuggling of Migrants Protocol in a timely manner;

(b) When a private ship carried search and rescue on a smuggling vessel in distress, ensuring rapid and safe disembarkation with the authorization of the competent State authorities, while respecting international obligations such as in regard to the 1951 Refugee Convention.

5. Good practices

(a) Consider the adoption of multilateral implementation agreements for article 8 of the Protocol to set reasonable time frames to respond to requests (as provided for by other international instruments containing similar provisions);

(b) Exempt ships that have rescued smuggled migrants in distress at sea, in good faith, from criminal responsibility;

(c) Share information on detections to allow intelligence-based investigations;

(d) Use indicators to detect smuggling on land.

F. Protection and assistance issues

1. Introduction: Protection and assistance under the Smuggling of Migrants Protocol

23. Panagiotis Papadimitriou, Crime Prevention and Criminal Justice Officer, UNODC, introduced this session with an overview of the provisions relating to assistance and protection of the Smuggling of Migrants Protocol. The paramount responsibility of States to protect and assist smuggled migrants, including those intercepted at sea, set forth in articles 9 paragraph 1 and 16 of the Protocol was underlined. The need to afford protection and assistance to all persons that have been the object of smuggling, without any discrimination based on their status or

otherwise, was also stressed. The obligations of States under the provisions of the UNTOC on protection of witnesses and victims of crime (art. 24 and 25), which apply to smuggled migrants that fall victims to crimes during the smuggling venture or provide testimony to the authorities were also briefly presented.

2. Protection needs in mixed migration flows — International protection and refugees

24. Helena Behr, Senior Protection Associate, UNHCR, discussed the international standards and norms governing the protection of asylum seekers and refugees, as well as the obligations of States in this regard. The content of the principle of non-refoulement and the obligation of all States, whether or not parties to the 1951 Geneva Convention relating to the status of refugees, to fully respect it as a rule of international customary law was stressed. In order to comply with international obligations on refugee protection, States need to ensure that border management measures in place, both on land and at sea, are protection-sensitive, so as to allow access to protection for persons fleeing persecution.

3. Identifying and assisting victims of abuse and exploitation, and unaccompanied minors

25. Simona Moscarelli, Project Coordinator, and Rita Duca, Anti-trafficking in Persons Field Expert, both from IOM, delivered a presentation on protection and assistance needs of vulnerable persons in mixed migratory flows, including unaccompanied minors, victims of violence and victims of trafficking in persons. The need to identify and cater to the different needs of different members of the same group of persons rescued at sea, as well as the importance of appropriate referral mechanisms and reception facilities for their accommodation upon disembarkation, were highlighted.

26. For unaccompanied minors, a proper identification procedure is of great importance; in case of doubt, considering the person to be under 18 years old is good practice. Prompt family tracing, separation of unaccompanied children from adult detainees and provision of psychological support were also highlighted as key elements of the response to their needs. Victims of abuse and violence need to be identified and taken care of by specialized medical doctors able to adequately address the extreme forms of violence often experienced during their journey. Victims of trafficking need also to be identified as soon as possible upon disembarkation, in cooperation with law enforcement, as for many of them the country of disembarkation is not the country of destination and timely identification may save them from subsequent exploitation. The use of specific indicators and special interviewing techniques to identify victims of trafficking was recommended. Victims of trafficking also need to be referred to a special protective environment and provided with psychosocial support.

27. The intervention of cultural mediators to facilitate communication between assistance providers and vulnerable persons was stressed as a good practice allowing to improve mutual understanding.

4. Good practices

- (a) Respect the principle of non-refoulement, including during interception at sea;
- (b) Apply the non-discrimination principle, and offer assistance and protect rights regardless of the status of the smuggled persons;
- (c) Respect the fundamental rights of the smuggled persons;
- (d) Ensure that immediate needs are catered for, including medical assistance;
- (e) Include civil society organizations in the provision of assistance and the protection of smuggled persons.

5. Needs identified

- (a) Train front line officers to identify needs for protection and assistance (including for vulnerable groups such as victims of trafficking and children, especially unaccompanied ones).

G. Investigating land-based smugglers

1. Prosecutor's perspective

28. Calogero Ferrara, Deputy Prosecutor at the Prosecutor's Office of Palermo, Italy, presented the methods and investigative techniques used by Palermo prosecutors to successfully investigate and prosecute cases of smuggling of migrants by sea. He stressed the need to establish a specialized group of prosecutors and investigators, as well as to adopt consolidated investigative protocols to be followed as soon as a potential incident of smuggling of migrants is detected. Extensive use of interception of telephone communications was crucial to identify all members of the smuggling network in the successful investigation presented by Mr. Ferrara; the existence of a protective framework for persons involved in smuggling activities who decide to cooperate with authorities as witnesses and incentives to do so, such as reduction of sentence or issuance of residence permits, is also instrumental to obtain valuable information from insiders. Challenges identified include lack of sufficient qualified interpreters, difficulty to ensure the presence of witnesses at the trial, and lack of effective police and judicial cooperation with countries of origin and transit, but also with destination countries as a result of divergent legislations.

2. Law enforcement perspective

29. Aondoaver Kuttuh, Director of Training and Manpower Development, Nigeria National Agency for the Prohibition of Trafficking in Persons, presented the different investigative approaches (proactive/reactive), the thin line between them and considerations proper to each type of investigations. He stressed the need for statutory compliance based on jurisdiction as well as the importance of financial investigation as the motive for smuggling of migrants is to make profit. He hence addressed the identification of financial transactions, analysis of financial or other records that prove the smuggling, the special techniques applicable and key

considerations when conducting such investigations. He also made a point on money-laundering and corruption.

3. Good practices

(a) Create specialized team or specialized agency within law enforcement or office of prosecutor on migrant smuggling, or include migrant smuggling in the competence of units or agencies specialized in organized crime;

(b) Use reliable interpreters (preferably of a different nationality than those interviewed);

(c) Apply special protocols for investigating organized crime groups that allow special investigative techniques such as interceptions and financial investigations, and train law enforcement personnel and prosecutors accordingly;

(d) Authorize requests for extraterritorial collection of evidence.

4. Recommended steps

(a) Coordinate the action of all relevant authorities;

(b) Take conservation measures on the assets of the suspects;

(c) Develop, adopt and disseminate code of conducts, guides, internal standard operating procedures and protocols in all agencies involved in addressing the smuggling of migrants.

H. Good practices in interviewing and debriefing

30. This session aimed at outlining techniques and methodology for efficient debriefing and interviewing of smuggled migrants in view of the collection of information on the smuggling networks, but also to ensure that protection needs of asylum seekers, refugees and unaccompanied minors are identified and addressed.

1. Debriefing

31. Emanuel Said, Debriefing Advisor, FRONTEX, presented good practices in debriefing for the purpose of gathering intelligence and stressed that knowledge and mutual understanding are essential for effective debriefing of migrants. Building trust and understanding through knowledge and respect, as well as the ability to listen and respect cultural sensitivities, are also key elements to obtain truthful accounts. It was also recommended to use the PEACE model in interviews — PEACE stands for Planning, Engaging, Account, Closure and Evaluation. Other good practices presented to participants included using cultural mediators, qualified interpreters and same-gender interviewers.

2. Interviewing asylum seekers

32. Helena Behr, Senior Protection Associate, UNHCR, explained that interviews with asylum seekers aim at establishing the likelihood of the existence of a well-founded fear of persecution in order to afford international protection. Information obtained through interviews with asylum seekers and refugees must be

as detailed and relevant as possible in order to understand the facts that led them to leave their countries, as very often the account of the asylum seekers is the only available element to assess whether they should be granted international protection. UNHCR is using the Dialogical Communication Method and endeavours to establish rapport with the interviewee – for this, the introduction phase of the interview is crucial. Other key elements highlighted were the thorough preparation of the interviewer before the interview and the adoption of an open-ended questioning style. Factors that can influence communication include culture, level of education, psychological state, trauma suffered and stress. The importance of using professional, neutral and adequately trained interpreters was also noted.

3. Interviewing children

33. Viviana Valastro, Head of Unit, Child Protection Department, Save the Children — Italy, delivered a presentation on how to approach, debrief and interview children on the move. Information to be provided to children includes information on the consequences of the age assessment, the importance of declaring their real age and the risks associated to false declarations. Ms. Valastro noted the right of children under the Convention on the Rights of the Child to express their views and to be involved in decisions that affect them. Involvement and participation of children can be ensured through the use of innovative methods to provide information, such as the recreational activities developed by Save the Children: “Colours” activities involve the use of different colours to convey different messages to different groups of children. In the same time, using child friendly language, ensuring that the children feel safe and paying attention to their reactions and behaviour during the interview were also highlighted as good practices. The key role of cultural mediators in facilitating communication with children was once again stressed.

4. Good practices

- (a) Build confidence with the person to debrief or interview;
- (b) Use neutral and trained interpreters and cultural mediators;
- (c) Use of PEACE model and open-ended questions;
- (d) Gather knowledge on the country of origin of the migrants and refugees;
- (e) Child-friendly recreational practices to provide and obtain information from children.

5. Needs identified

- (a) Train personnel on debriefing and interviewing techniques;
- (b) Adopt procedure and guidelines on debriefing and interviewing, including for children and trafficking victims.

I. Coordination issues

1. Coordination at sea

34. Captain Pierini, Office of the Chief of Staff, Italian Navy, provided an expert analysis of the Italian system of law enforcement at sea, confronting the same with its potential interaction with the prosecution model in place in Italy and the action at sea of military vessels operating under a different legal framework.

35. The Italian system, as most systems of law enforcement at sea, distinguishes between military and law enforcement functions. Under the Italian Constitution and Italian statutes, however, there are no limitations as to police tasks which can be carried out by Armed Forces. There are Police Forces with military status (e.g. Carabinieri and Finance Police) and in certain situations military commanders perform law enforcement functions. From a different perspective, warships are regarded, due to the law enforcement functions of their Commanders, as the outposts of the Italian jurisdiction. This facilitates the consequentiality between powers exercised by the warship under the law of the sea and the exercise of criminal jurisdiction by Italian Courts.

36. The role of “Ship Riders” or LEDET (Law enforcement Detachments) embarked on ships of different nationality within the context of multinational operations was analysed in its advantages and limits, considering the different legal framework under which such Ship Riders would operate.

2. Coordination on land

37. Aondoaver Kuttuh, Director of Training and Manpower Development, Nigeria National Agency for the Prohibition of Trafficking in Persons, reviewed the many potential agencies involved in the detection, investigation and prosecution of smuggling cases, for example including among front line officers: border patrols, the police, the army, immigration services and customs. He also highlighted the mandate of each agency, the role they could be playing and the tasks they could be undertaking. He stressed the need to establish focal points in each agency and ensure that the agency with the main mandate coordinates the action. In order to ensure smooth operations, standard operating procedures defining everyone’s roles are essential.

3. Good practices

(a) Adopt standard operating procedures and protocols for the coordination of operations between all agencies involved at the national level, including maritime guides for maritime crimes and rules on the use of force, to ensure effective prosecution, taking into account the different legal system into which the smugglers would be delivered for prosecution;

(b) Regulate action of Ship Riders with status of force agreements (SOFA) applicable to maritime operations on board of ship of nationality which differs from the nationality of the Ship Rider, in order to provide the Ship Rider with uniform powers and legal framework;

(c) Create referral mechanisms for front line responders to respond to mixed migration flows (especially for children, including non-accompanied children, trafficking victims, refugees and asylum seekers).

4. Recommended steps

(a) Coordinate operations, share intelligence and information between frontline/detection services (incl. the military where applicable) and the investigators, judicial police, prosecutors;

(b) Ensure national level coordination and information sharing on organized crime involvement in irregular migration e.g. with national coordination committee at ministerial level;

(c) While performing operations at sea, ensure that directives identifying the role and powers of each law enforcement officer are in place, to ensure that effective prosecution can be based on the action of law enforcement officers.

J. Prosecution challenges

38. Gabriele Fragalá, Prosecutor at the Prosecutor's Office of Catania, Italy, gave a comprehensive account of obstacles that can be encountered when prosecuting migrant smuggling cases, in particular when committed at sea. He also offered good practice examples of the creative approach developed in his jurisdiction to facilitate the prosecution of smuggling cases such as the participation of smuggled migrants as witnesses (including protection measures and temporary stay permit).

39. Several case studies were used to illustrate the session that included the following situations: (1) smugglers committing crime in Italy (local aiding and abetting of criminal organizations sitting abroad); (2) "Mother-ship" with smaller ships in tow; (3) transport of the migrants with unseaworthy vessels, thus calling for Italian Navy rescue. This illustrated the differences within the three cases as to the criteria to establish jurisdiction and, mainly, as to the investigative steps to be taken and the complexity of the inquiry to be carried out, that is: how to move from a single disembarkation of migrants to the demonstration of the existence of the transnational network acting behind it; how to build a complete investigation and thus a solid prosecution case.

40. Mr. Fragalà also reviewed the main objections and arguments raised by the defendants' lawyers and how to address them: procedural defences and merit contentions, lack of jurisdiction, unlawfulness of the enforcement measures adopted by the prosecutor; breach of defence rights, mainly the inability to exercise right to confrontation, whenever the migrants flee away after having rendered statements against the defendants; evidence inadequacy as to uphold smugglers' criminal liability, mainly regarding the existence and participation to a criminal organization and the inherent mens rea.

1. Good practices

(a) Consider alternative or additional offences to migrant smuggling where necessary to ensure the prosecution of the smugglers;

(b) Consider to allow migrants to give their informed consent to become witnesses to ensure their cooperation in order to secure the conviction of the smugglers;

(c) Ensure the corroboration of evidence and not rely solely on isolated statements;

(d) Put in place procedures to mitigate the risk of flight of the witness, e.g. speedy presentation to the judicial authorities;

(e) To reduce the fear of retaliation of migrants, consider granting them permits to stay for safety reasons;

(f) Establish specialized anti-smuggling prosecuting teams.

2. Recommended steps

(a) Adopt and make use of appropriate legal frameworks to tackle organized crime and migrant smuggling;

(b) Develop intelligence to better understand patterns, identify repeat involvement of the same organized crime groups and share intelligence between the concerned services to prosecute higher level organizers and dismantle smuggling networks.

K. International cooperation

1. Judicial cooperation

41. Gabriele Fragalà, Prosecutor at Prosecutor's Office of Catania, Italy, presented cases where international cooperation was attempted both in the execution of mutual legal assistance requests and extradition proceedings. According to the Italian criminal procedure, evidence collection abroad requires the formal authorization of foreign authorities in order for the evidence to be admissible in criminal proceedings before Italian courts. Such authorization is often difficult to obtain, due to challenges in identifying the counterparts for addressing requests, particularly in countries where the bilateral judicial exchange is affected by political instability, or, in some cases, due to limited responsiveness from the foreign authorities.

42. Efficient and timely response to requests for investigation and mutual legal assistance by States where smuggling networks operate allow to obtain crucial information for prosecution purposes. A number of requests, however, do not receive a positive response, particularly in cases of extradition, when refusals are forwarded through diplomatic channels. In this regard, lack of criminalization of migrant smuggling in some countries affects the extradition procedure as a result of the principle of dual criminality. A case study was used to illustrate the session.

2. Police to police cooperation

43. Andoaver Kuttuh, Director of Training, Nigeria National Agency for the Prohibition of Trafficking in Persons, highlighted the importance of police to police cooperation along the migration routes to allow identification of smugglers in each stage of the smuggling process. Differences in culture and language hamper police

to police cooperation. Also, organizational differences, with structure, ranking and functions of law enforcement agencies often being radically different, can result in lack of cooperation. Mr. Kuttuh also noted the difficulty in collecting information when different authorities in different countries are involved.

3. International cooperation in return procedures

44. Simona Moscarelli, Project Coordinator, IOM, introduced the issue of return of smuggled migrants and initiated a discussion with the participants on aspects related to supporting voluntary return of migrants to their home countries. The discussion was centred on two possible options: support in cash or support aimed at allowing the development or enhancement of skills/small business models.

4. Good practices

(a) Use the Smuggling of Migrants Protocol and UNTOC as a basis for international cooperation;

(b) Consider means to allow jurisdiction on board boats involved in search and rescue and interception on the high seas for countries that have an interest in investigating and prosecuting the smuggling case;

(c) Establish a common platform to share information among law enforcement agencies from different countries;

(d) Share knowledge on the structure and organization of law enforcement systems in different countries;

(e) Support the implementation of programmes to develop and/or enhance working skills/small business models for migrants choosing voluntary return and to access vocational training in the countries of origin.

5. Recommended steps

(a) Make migrant smuggling an extraditable offence and align national frameworks in order to allow for dual criminality and consequently extradition in smuggling cases;

(b) Foster mutual legal assistance in migrant smuggling cases and ensure extraterritoriality of evidentiary rule to allow for effective prosecution of transnational smuggling networks;

(c) Exchange information, including relating to money-laundering among practitioners at the regional and trans-regional level;

(d) Make use of existing international tools such as INTERPOL lost and stolen documents database;

(e) Identify national authorities to centralize requests for mutual legal assistance, extradition and transfer of sentenced persons (as per art. 16, 17 and 18 of UNTOC).

L. Prevention measures

45. Panagiotis Papadimitriou and Morgane Nicot, Crime Prevention and Criminal Justice Officers, UNODC, facilitated a group discussion on measures to prevent migrant smuggling. The participants discussed different approaches to prevention, providing examples from their respective countries. It was noted that awareness raising of the public on the dangers and criminal nature of migrant smuggling should target first and foremost the youngest and most vulnerable persons, and prioritize regions witnessing large numbers of departures of migrants. Testimonies of persons that have been the object of smuggling and can share personal experiences on the dangers and threats of the journey should also be used. Comprehensive migration policies in countries of origin, proposing alternatives to migration and encouraging investment in development projects are also favouring prevention of migrant smuggling.

1. Good practices

- (a) Include border control agencies and consulates in corruption prevention plans;
- (b) Address root causes of migration, e.g. through development programmes and education;
- (c) Offer vocational training opportunities for the youths.

2. Recommended steps

- (a) Develop awareness-raising campaigns and material, involving returnees, to alert on the dangers of putting one's life and money in the hands of smugglers and develop specific messages targeting specific communities;
- (b) Support comprehensive and integrated action plans against the smuggling of migrants that would include awareness-raising measures, training and rehabilitation for youths and migrants;
- (c) Share the burden between origin, transit and destination countries and ensure that States with less capacities are assisted by better equipped States to address migrant smuggling, including through capacity-building.

IV. Conclusions and next steps

46. The workshop was very well received and attended and the high quality of the presentations and level of knowledge of the resource persons were praised by all participants. They welcomed the opportunity they were given to deepen their understanding of challenges posed by migrant smuggling, including at sea, to get acquainted with good practices developed in other jurisdictions, and to liaise with counterparts and peers from other countries affected by smuggling of migrants along common routes.

47. Participants actively took part in the stock taking and identification of needs and suggested a range of measures to be considered to effectively implement the

Smuggling of Migrants Protocol (cf. text box for each session). They also identified some specific areas for follow-up.

48. After acknowledging that support from regional and international organizations, as well as at the bilateral level, was strongly encouraged to address the needs identified in participating countries, participants called upon UNODC's expertise to support their respective States through technical assistance. In particular, UNODC was invited to support capacity-building of criminal justice practitioners, legislative reform and sharing of good practices. Some of the participants asked for follow up actions including national capacity-building workshops and subregional workshops to enhance cooperation.

49. UNODC endeavours to address these requests through its Global Programme against the Smuggling of Migrants and Global Maritime Crime Programme, its Regional Programmes for North Africa and the Middle East, for Eastern Africa, and for West and Central Africa, in line with its Strategy for the Building of Capacity in North African Countries through and Integrated Response, and its Regional Strategy for Combating Trafficking in Persons and Smuggling of Migrants for West and Central Africa.

50. Those activities will take place within the framework of regional and international initiatives such as the Rabat Process and the Khartoum Process, and the Joint EU-Africa Strategy, and UNODC will continue liaising with partners among EU agencies, UN organizations, IOM and NGOs to ensure complementarity and involve their relevant expertise.

A. Way forward: technical assistance offered by UNODC to address migrant smuggling, including at sea, in the region

1. Capacity-building

51. Build the capacity of criminal justice practitioners based on the needs identified in each country, and address in particular:

- (a) Detecting, investigating and prosecuting the smuggling of migrants;
- (b) Using financial investigations and special investigative techniques in migrant smuggling cases;
- (c) Ensuring cooperation in investigations and prosecutions of smuggling cases;
- (d) Debriefing and interviewing techniques;
- (e) Identifying protection and assistance needs, including for victims of trafficking and children in mixed migration flow.

2. Legislative reform

52. Domesticating the provisions of the Smuggling of Migrants Protocol and the UNTOC:

- (a) Advocate for the ratification of the Smuggling of Migrants Protocol;
- (b) Support the analysis and review of national legislation;

(c) Support the drafting of amendments or legislation in line with the Smuggling of Migrants Protocol.

3. Exchange of information and cooperation

53. Enhance the evidence-based knowledge and develop good practices in the implementation of the Smuggling of Migrants Protocol:

- (a) Share good practices relating to awareness raising campaigns;
 - (b) Share good practices on comprehensive measures adopted at the national level to address the smuggling of migrants;
 - (c) Collect and disseminate legislation and case law of Member States;
 - (d) Hold similar workshops at the subregional level to foster cooperation.
-