



REGIONAL SUPPORT OFFICE
THE BALI PROCESS

Understanding the Smuggling of Migrants Protocol



UNODC

United Nations Office on Drugs and Crime

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (the Bali Process) was established in 2002 and is a voluntary and non-binding regional consultative process co-chaired by the Government of Australia and Indonesia and comprising over 45 member countries and organizations.

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An aerial photograph taken from an airplane window, showing a vast, densely packed cityscape below. The city is characterized by a high concentration of small, colorful buildings, likely residential. A prominent, wide, multi-lane highway or boulevard runs vertically through the center of the image, filled with traffic. To the right, a large, open green field, possibly a sports field or park, is visible. The sky above is filled with large, white, fluffy clouds, and the wing of the airplane is visible on the right side of the frame.

Understanding the Smuggling of Migrants Protocol

Marika McAdam

Foreword

Across the Asia-Pacific region, organized crime groups reap criminal profits and undermine the capacity of States to control their borders and assert their own sovereignty. By monetizing the facilitation of irregular migration, migrant smugglers weaken the criminal justice apparatus of States, undercut the prosperity of affected communities and compromise the lives and safety of vulnerable people. At the 2016 Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Ministers declared deep concern about the transnational criminal enterprises who profit from these crimes and encouraged Members to effectively criminalize people smuggling in accordance with relevant international law and regional instruments.

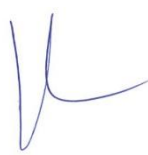
Reaffirming this declaration at the 2018 Ministerial Conference, Members further declared support for increasing links between the Bali Process and other related regional and international consultative processes, including ASEAN. At the 37th ASEAN Summit in 2020, ASEAN Member States encouraged enhanced cooperation among ASEAN Member States to tackle and combat smuggling of migrants, through platforms such as the Senior Officials Meeting on Transnational Crimes (SOMTC) and the Bali Process.

Recognizing the progress that has already been made to realizing the commitments made, the Bali Process Regional Support Office (RSO) and the UNODC Regional Office for Southeast Asia and the Pacific (ROSEAP) are pleased to offer this publication to strengthen understanding of the international law relevant to migrant smuggling. The RSO welcomed this partnership with UNODC ROSEAP, as a member of the Bali Process and guardian of the Protocol against the Smuggling of Migrants by Land, Sea and Air (the Smuggling of Migrants Protocol).

Through this, we trust this publication will continue to support Bali Process Member States in their efforts to respond to this transnational organized crime and their resolve to collaboratively confront it.



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Introduction

Introduction

There is widespread agreement among Bali Process Member States of the need to cooperate against people smuggling. However, not all are party to the international instrument that sets out a framework for this cooperation; the Smuggling of Migrants Protocol by Land, Sea and Air (Smuggling Protocol) supplementing the United Nations Transnational Organized Crime Convention (UNTOC).¹ Indeed only half (22 of the 45 Bali Process Member States) are party to the Smuggling Protocol, though almost all are party to the UNTOC (Annex 3). The fact that most States not yet party to the Smuggling Protocol are in the Asia-Pacific makes this a region of priority in achieving global efforts to remove areas of impunity for organized criminals.

There are several gains for States in becoming party to the Smuggling Protocol, beyond the advantage of entering into a large community of States that have committed to a common framework for cooperation to address smuggling of migrants and eradicating safe-havens for transnational organized criminals. By promoting a harmonized understanding of smuggling of migrants, the Smuggling Protocol strengthens capacity to cooperate across smuggling routes. Shared understanding also improves data to achieve a more accurate domestic, regional and global picture to inform evidence-based response.

Also among the reasons for States to become party to the Smuggling Protocol, is the opportunity it offers to uphold sovereignty by combating criminal activities that profit from violation of State borders and the proliferation of organized crime contrary to State interests. This opportunity accords with the emphasis the Bali Process places on cooperation that is “based on an acknowledgment that each State has a sovereign right and legitimate interest to develop and implement its own laws to address people smuggling.”² Bali Process Member States are at different stages of that journey. Some that are party have yet to take legislative measures against smuggling of migrants, while others that have not yet acceded to the Protocol, have nonetheless taken steps in accordance with its requirements.

This publication is offered to legislators, policy makers and criminal justice practitioners in Bali Process Member States and beyond, to strengthen their understanding of the Smuggling Protocol, regardless of whether they are party to that instrument or not, and regardless of how far they have progressed in their efforts to prevent and combat smuggling of migrants.

¹ *Protocol Against the Smuggling of Migrants By Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime*, GA Res 55/25, UN GAOR, UN Doc A/45/49 annex II (the Smuggling Protocol). As at the end of 2020, there were 190 States parties to the United Nations Transnational Organized Crime Convention, and 150 States parties to the Smuggling of Migrants Protocol.

² The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, “First Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime” (February 2002)



Understanding smuggling of migrants

'Smuggling of migrants' - also referred to as people smuggling, migrant smuggling, or human smuggling - is the crime of materially profiting by procuring another person's illegal border crossing. It is a crime that detracts from economic, social, cultural and human development, while thriving on and perpetuating instability and corruption. Across Bali Process Member States, organized criminals take advantage of the gap between the demand for human mobility on the one hand, and migration laws, policies and practices that do not address that demand on the other, to profit by providing services to circumvent migration and border controls. Notwithstanding the scale of the illicit profits made each year - with the UN Office on Drugs and Crime (UNODC) estimating that migrant smugglers yield up to \$7 billion in criminal profits annually - the crime carries on with large-scale impunity.³

³ The United Nations Office on Drugs and Crime estimates that in the year 2016 alone, migrant smugglers smuggled some 2.5 million people for a profit of up to USD\$7 billion. See UNODC *Global Study on Smuggling of Migrants 2018* (UNODC, 2018) 5

Migrant smuggling remains a low risk, high profit crime for its perpetrators owing to insufficient response and coordination along smuggling routes. Response is also hampered because it is often misidentified as a migration-related offence. Smuggling of migrants is often conflated with trafficking in persons, which is a distinct though sometimes related crime captured in a separate instrument that also supplements the UNTOC (See Annex 2).

Snapshot: What is migrant smuggling?

Smuggling of migrants is defined as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or permanent resident” (Smuggling Protocol, article 3(a)). In other words, migrant smuggling is a transnational organized crime, the perpetrator of which facilitates another person’s illegal border crossing, for profit. Those who use smuggling services may be migrants, asylum seekers, or others. Criminals including foreign terrorist fighters have been known to use the services of migrant smugglers. Smuggled migrants are not ‘victims’ of the crime of smuggling of migrants, but they may fall victim to other crimes in the course of being smuggled, including serious crimes like human trafficking, assault and rape.



Table 1: Understanding myths and realities of migrant smuggling

Myth	Reality
<i>“Migrant smugglers are always violent and abusive towards the migrants they smuggle”</i>	Some smugglers are extremely violent. Migrant smugglers have subjected migrants to abuse (e.g. physical and sexual abuse including rape) as well as exploitation during smuggling journeys. Migrant smugglers have even murdered migrants. However, not all migrant smugglers are violent and abusive. Some smugglers may provide services to migrants in accordance with what was promised, and deliver them safely to their destination without mistreating them.
<i>“Being smuggled is always dangerous for smuggled migrants”</i>	Smuggling journeys can be dangerous where the modus operandi of smugglers endangers migrants’ lives and safety, or entails inhuman or degrading treatment. Such situations are considered in international law to be ‘aggravated smuggling’ (Smuggling Protocol, article 6(3)). In extreme cases, the result may be loss of life. But in other cases, smugglers may provide passage that is safer and less expensive than regular migration options. Indeed, attempting to travel independently across some routes may be more dangerous for migrants and present risks that smugglers can reduce or avoid.
<i>“Smuggled migrants are always irregular migrants”</i>	Many different people use the services of migrant smugglers. Some are economic migrants seeking to irregularly enter a country. Some may be criminals including terrorists who use the services of smugglers to avoid detection by authorities. And in still other cases, people who use the services of smugglers are asylum seekers who have paid to be smuggled to access asylum systems.
<i>“A person who facilitates a person’s illegal border crossing for humanitarian reasons is a migrant smuggler”</i>	The motive of migrant smugglers is financial or material benefit. Someone who smuggles another person for humanitarian reasons is not a migrant smuggler unless he or she seeks to profit from doing so. Where a person acts solely for humanitarian reasons, he or she is not a migrant smuggler according to international law.



Understanding the international legal framework

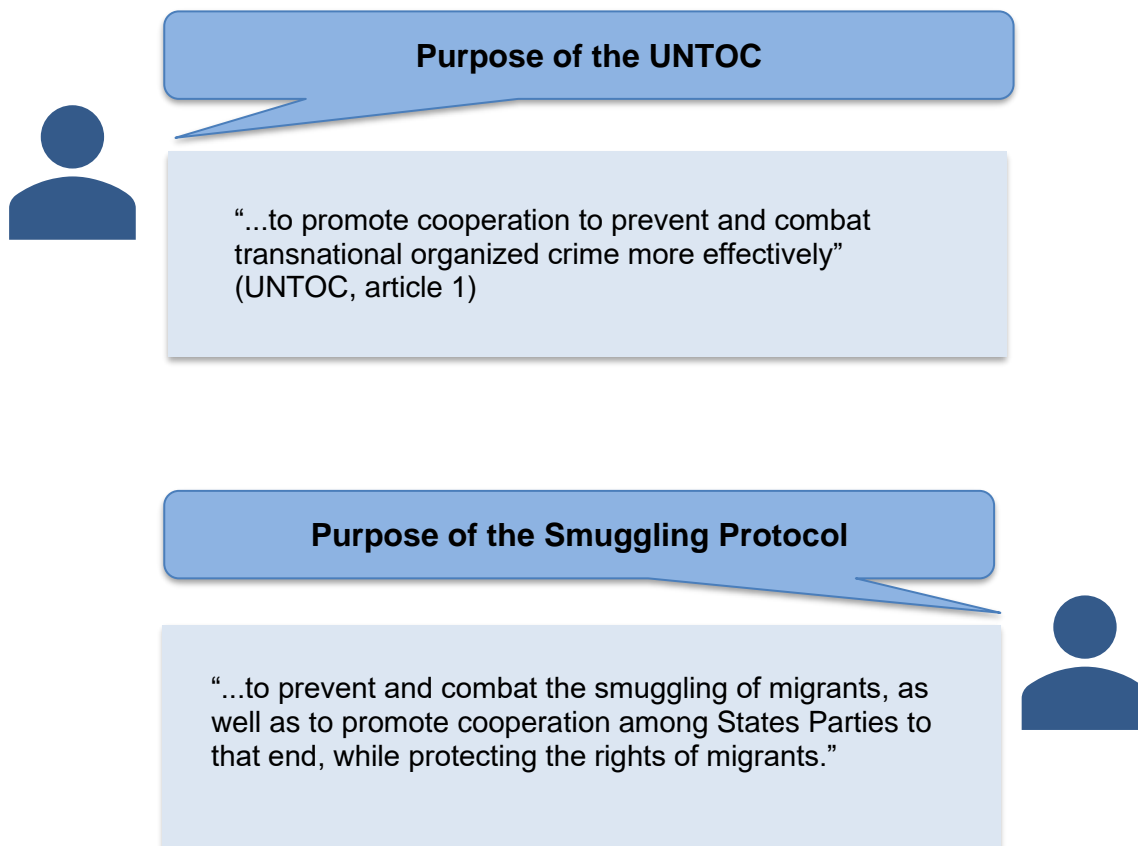
At the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, representatives encouraged Bali Process members to effectively criminalize people smuggling in accordance with relevant international and regional instruments.⁴ The international instrument relevant to migrant smuggling is the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol). The Smuggling Protocol supplements the United Nations Transnational Crime Convention (UNTOC), alongside two other supplementary Protocols; one on trafficking in persons, the other on manufacturing and trafficking in firearms. States cannot become party to the Protocols without being party to the UNTOC. Almost every Bali Process Member State has ratified the UNTOC, speaking to widespread commitment to strengthen criminal justice institutions and international cooperation to confront transnational organized crime. It also signifies an opportunity for cooperative networks to span the globe, removing areas of impunity for organized criminals.

⁴ Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime, the Sixth Ministerial Conference of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Bali, 23 March 2016. Also see: *Policy Guide on Criminalizing Migrant Smuggling* (Bali Process, 2014)



What is the purpose of the UNTOC and the Smuggling Protocol? The purpose of the UNTOC is to “promote cooperation to prevent and combat transnational organized crime more effectively” (UNTOC, article 1). It sets out a framework for extradition (article 16), transfer of sentenced persons (article 17), mutual legal assistance (article 18), joint investigations (article 19), transfer of criminal proceedings (article 21) and law enforcement cooperation (article 27). Within that framework for cooperative criminal justice response, the purpose of the Smuggling Protocol is to prevent and combat smuggling of migrants as it is defined in the Protocol, and to promote cooperation to that end, while protecting the rights of smuggled migrants (Smuggling Protocol, article 2).

Purpose of the UNTOC and the Smuggling Protocol



Who does the UNTOC and Smuggling Protocol target? The Smuggling Protocol does not stand alone, but must be read in line with the UNTOC. In other words, the UNTOC also applies to the offences in the Smuggling Protocol, and the Smuggling Protocol must be interpreted in line with provisions of the UNTOC (UNTOC, article 37(4); Smuggling Protocol, article 1). The relationship between the instruments underscores that the target of the Smuggling Protocol is the transnational organized criminals who smuggle migrants for profit; it does not target migrants themselves, nor people who facilitate their illegal entry for reasons other than financial or material benefit.⁵ Indeed, the Smuggling Protocol only applies where there is some degree of transnationality and involvement of an organized crime group (article 4, Smuggling Protocol).⁶ For the crime of smuggling of migrants to have occurred it must have been committed intentionally, meaning both the intention to procure another

⁵ “Organized criminal group” is defined as “a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly a financial or other material benefit” (United Nations Transnational Organized Crime Convention, Article 2(a))

⁶ However, domestic laws should not be drafted in a way that requires prosecutors to prove either ‘transnationality’ nor the involvement of organized crime as an element of the smuggling offence, in order to achieve conviction (article 34(2), UNTOC). For more on the scope of application of the Smuggling Protocol, see *Legislative guides for the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (UNODC, 2004) 332-334

person's illegal entry, *and* the intention to obtain a financial or other material benefit from that procurement.

The importance of the 'Financial or material benefit element' of the smuggling offence

The purpose of the crime of smuggling of migrants is 'financial or other material benefit', understood simply as profit or gain. The drafters included this element to *include* the activities of organized crime groups acting for profit, and to *exclude* the activities of those who support migrants for humanitarian reasons or on the basis of close family ties. This 'financial or other material benefit' element is so fundamental to the meaning of 'smuggling of migrants' in international law, that it is not only included as the *purpose* of the smuggling of migrants offence (Smuggling Protocol, article 3), but also as a requirement for its criminalization (Smuggling Protocol, article 6), and as part of the definition of organized crime group (UNTOC, article 2).⁷

Relationship of the Smuggling Protocol with other international law: The Smuggling Protocol does not interfere with the role of other international instruments that States parties may or may not be parties to, nor create new obligations under any other instruments, or require States to become party to them. This is made clear in article 19(1) of the Smuggling Protocol that reads:

“

Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law, and in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

”

⁷ For further information see *Issue Paper: The Concept of 'Financial or other material benefit' in the Smuggling of Migrants Protocol* (UNODC, 2017).



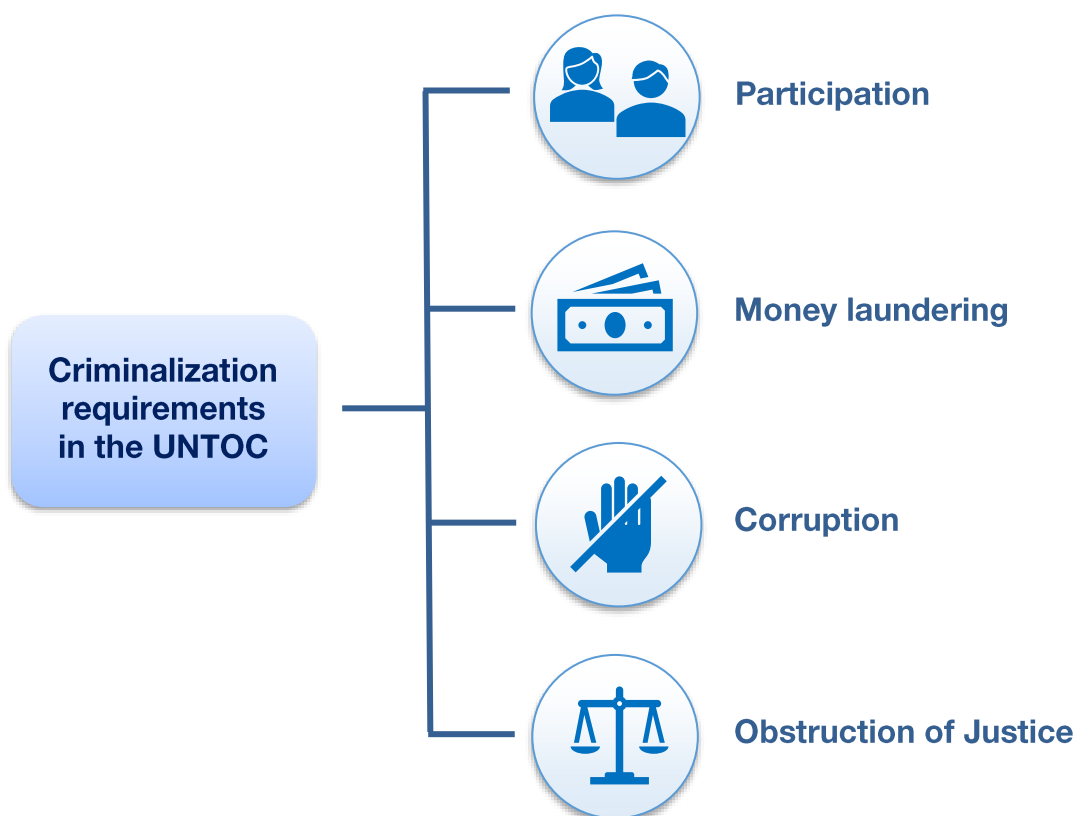
Understanding obligations in the international legal framework

This section sets out the requirements of the UNTOC and the Smuggling Protocol in pursuit of their stated purposes to prevent and combat the transnational organized crime of smuggling of migrants, promote cooperation to that end, while protecting the rights of smuggled migrants (UNTOC, article 1; Smuggling Protocol, article 2).

Prosecution

Criminalization requirements in the UNTOC: States parties to the UNTOC commit to establishing criminal offences in their domestic law, including:

- **Participation** in an organized crime group (article 5)
- **Money laundering** (article 6)
- **Corruption** (article 8)
- **Obstruction of justice** (article 23)



Additionally, they commit to making necessary procedural and other legislative changes as necessary, to ensure effective criminalization of these offences, including by establishing:

- **Liability** of legal person (article 10)
- **Sanctions** that reflect the gravity of offences (article 11)
- Identification, tracing, freezing or seizure of **assets** and confiscation of **proceeds of crime** and property (article 12)
- **Jurisdiction** over offences (article 15)

Also of relevance to criminalization, is the use of special investigative techniques that is, controlled delivery, electronic surveillance and undercover operations (article 20), if allowed by the legal system of the State.



The **Policy Guide on Criminalizing Migrant Smuggling** (Bali Process, 2014) clearly sets out legislative requirements for criminalizing smuggling of migrants in accordance with the Smuggling Protocol and the UNTOC.

Criminalization requirements in the Smuggling of Migrants Protocol: According to article 6 of the Smuggling of Migrants Protocol, States are required to criminalize:

- **Smuggling of migrants**, being defined in article 3 as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State party of which the person is not a national or permanent resident.”
- Producing, procuring, providing or possessing of **fraudulent travel or identity documents** for the purpose of migrant smuggling (article 6(1)(b))
- **Enabling illegal stay** of a person not entitled to remain in the country, when committed intentionally to obtain financial or other material benefit (article 6(1)(c))
- **Organizing, directing, participating** as an accomplice or attempting to commit any of the above offences (article 6(2)).

The Smuggling Protocol also obliges States to adopt legislation and other measures (subject to their legal system) to establish aggravating circumstances, being those that endanger or are likely to endanger the lives or safety of migrants, or that entail their ‘inhuman or degrading treatment’, including for exploitation (article 6(3)).



Non-criminalization of smuggled migrants for being smuggled

The investigative and prosecutorial target of the Smuggling Protocol is organized criminals who profit from smuggling others. It is *not* concerned with the legal or illegal conduct of migrants themselves, and does *not* create any basis for criminalizing people for being smuggled. This is made explicit in Article 5: “Migrants who are the objects of smuggling offences are not liable to criminal prosecution under the Protocol for being the object of such conduct.” At the same time, the Smuggling Protocol does not prohibit States from taking measures to punish other conduct that may constitute an offence under its domestic law (article 6(4)). This means that while migrants cannot be criminalized for being smuggled under the Smuggling Protocol (as per article 5), they can still be held liable for other offences in domestic law, including illegal entry and illegal residence (as per article 6(4)).

The fact that the Smuggling Protocol does not criminalize migrants for being smuggled, nor detract from State capacity to criminalize smuggled migrants for other offences in their own legislation, is reinforced by the Global Compact for Safe, Orderly and Regular Migration, that notes: “We further commit to ensure that migrants shall not become liable to criminal prosecution for the fact of having been the object of smuggling, notwithstanding potential prosecution for other violations of national law” (objective 9, paragraph 25).

The Smuggling Protocol is neutral on whether migrants who migrate irregularly can be charged with any offences. States may nonetheless wish to consider the impact that imposing offences on smuggled migrants may have on their efforts to prevent and combat migrant smuggling. Subjecting irregular migrants to offences raises risks that State capacity to fulfil international obligations will be reduced, in the following respects:



Prosecution obligations: Cases against suspected smugglers may be weakened where potential witnesses (whose testimony is often key evidence) are arrested or deported in ways that make them unable to support investigation and prosecution processes against migrant smugglers



Prevention obligations: Where smuggled migrants are the target of criminalization, smugglers have a constant supply of migrants to re-smuggle, and are emboldened by investigative scrutiny deflected away from them onto migrants, reducing their risk of disruption.



Protection obligations: Where smuggled migrants are simply arrested and deported, protection obligations may go unfulfilled if people in need of protection (including asylum seekers and victims of trafficking) are not identified among smuggled migrants.



Prevention

Prevention requirements in the UNTOC: Article 31 of the UNTOC requires States parties to endeavour to take appropriate legislative, administrative or other measures to prevent transnational organized crime groups, including by:

- Strengthening **cooperation** between law enforcement agencies, prosecutors and relevant private entities
- Developing **standards and procedures** to safeguard the integrity of public and private entities, including codes of conduct for relevant professionals
- Preventing misuse by criminal groups of **tender procedures**
- Preventing misuse of **legal persons** by organized crime groups including by establishing public records of legal persons; disqualifying convicted persons from serving as directors of legal persons; reintegrating persons convicted of UNTOC offences; regular evaluation of legal instruments; and, administrative practices to detect their vulnerability to misuse by organized criminal groups
- Promoting **public awareness** of the risks of transnational organized crime and promoting public participation in prevention of crime.

States parties are to collaborate with each other and with relevant international and regional organizations in taking these measures to prevent transnational organized crime. Measures may include projects that aim to alleviate the circumstances that render socially marginalized groups vulnerable to transnational organized crime.

Prevention requirements in the Smuggling Protocol: Obligations to take prevention measures in the Smuggling Protocol (that are to be read in conjunction with those set out in the UNTOC) include measures to allow for:

- Exchange of certain types of **information** with other States parties (article 10)
- Prevention and detection of migrant smuggling at borders through **border controls**, and requirements for commercial carriers to check travel documents (article 11)
- Quality of and security of **travel or identity documents** (article 12)
- Verification of the legitimacy and validity of **travel or identity documents** (article 13)
- **Training and technical cooperation** to prevent smuggling and ensure humane treatment of smuggled migrants (article 14)
- **Information campaigns** and **development programmes** to address root socio-economic causes including poverty and underdevelopment (article 15).



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Crime prevention is only one component of prevention of smuggling of migrants

The Smuggling Protocol is not a migration instrument. Its operative provisions are silent on States' approaches to migration management, beyond explicitly respecting and protecting State sovereignty (UNTOC, article 4). However, its preamble recalls the need to address root causes of migration, and maximize the benefits of migration for development. Further, its requirement for States to strengthen border controls against smuggling is without prejudice to international commitments in relation to free movement of people (article 11).

The criminal justice response to smuggling of migrants is only one component of a comprehensive prevention approach. Confronting only the transnational organized crime that profits from the market for smuggling services does nothing to address its underlying causes and drivers. Unless the determinants of smuggling are also addressed, response will only ever be reactive rather than proactive. Understanding this reality, in the 2016 Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime (2016), Ministers and representatives of Bali Process members acknowledged “the need to address the root causes of irregular movement of persons and forced displacement, and the frequent linkage between the breakdown of good governance and the ease of people smuggling and irregular migrant ventures.”

In origin countries, root causes include socio-economic drivers of human mobility, including poverty, discrimination, persecution, conflict, crises and lack of access to livelihood and economic opportunities that push people to seek the services of smuggling, or indeed into profiting from providing smuggling services. In transit and destination countries, border, migration and labour management policies may leave gaps or create opportunities for organized criminals to take advantage of. Restrictive border controls can increase demand for and cost of smuggling services to circumvent them.⁸

⁸ Global study on smuggling of migrants 2018 (UNODC, 2018) 6.



Protection

Protection requirements in the UNTOC: To ensure effective criminalization, States are required to take appropriate measures, within their means, to protect witnesses (article 24) and victims (article 25) from retaliation or intimidation in criminal proceedings. The provision concerning protection of victims is always relevant in the case of human trafficking given trafficked people are victims of trafficking. In the case of migrant smuggling, it may be relevant where smuggled migrants are victimized, whether because aggravated forms of smuggling are used or because they fall victim to trafficking in persons or other crimes. Witness and victim protection measures may include physical protection from further harm, relocation and special arrangements for giving testimony.

Protection requirements in the Smuggling Protocol: The Smuggling Protocol requires States parties to take appropriate measures to:

- Protect smuggled migrants from **death, torture or other cruel, inhuman or degrading treatment or punishment** (article 16(1)) and **violence** that may be inflicted on them because they are smuggled (article 16(2))
- Afford **appropriate assistance** to migrants whose lives or safety are endangered by smugglers (article 16(3))⁹
- Comply with obligations under the **Vienna Convention on Consular Relations** to inform the person of the notification and communication obligations under that Convention (article 16(5)) when smuggled migrants are detained.

⁹ In applying the provisions Article 16(1), (2) and (3), States parties are to take into account the special needs of women and children.

These protections are likely already provided for in domestic law, though in order to give effect to these provisions of the Protocol, States may need to amend legislation to ensure that the language used does not result in exclusion of non-citizens or discrimination against migrants on the basis that they have been smuggled (article 19(2)).

The Smuggling Protocol and the human rights of migrants

The Smuggling Protocol does not create additional legal status, or substantive or procedural rights for smuggled migrants. Nor does it detract from existing rights or protection obligations in international or domestic law. Rather, the Protocol clarifies its relationship with other areas of international law by underscoring all the rights, obligations and responsibilities that a State already has on the basis of other regional or international instruments to which it is already party, including international humanitarian and human rights law (article 19). Accordingly, in interpreting and implementing the Smuggling Protocol, States must be adept at identifying the protection obligations and considerations that may arise outside of the Smuggling Protocol in existing international, regional or domestic law. No new obligations are created in respect of those instruments.

‘Safeguards’ in the Smuggling Protocol: There are safeguard provisions in the Smuggling Protocol relating to measures taken on board vessels and in the return of smuggled migrants.

In relation to measures taken aboard vessels, States parties are required to:

- Ensure the **safety and humane treatment** of passengers (article 9(1))
- **Compensate** vessels for any loss or damage where enforcement grounds for measures against vessel prove to be unfounded (article 9(2))

In relation to measures taken to return smuggled migrants, States parties are required to:

- Carry out **return** in an orderly manner with due regard for the safety and dignity of the person being returned (article 18(5)) without prejudice to any right they may have in domestic law (article 18(7)).

Article 18 does not create any rights for smuggled migrants, nor does it affect any obligations States may have under other treaties or bilateral or regional agreements or arrangements relevant to return (article 18(8)).



Cooperation

Cooperation requirements under the UNTOC: In confronting transnational crime involving organized crime groups, States parties to the UNTOC are required to:

- Provide for **extradition** to ensure organized criminals cannot escape justice (article 16)
- Consider entering into agreements or arrangements on the **transfer of sentenced persons** (article 17)
- Ensure the widest measure of **mutual legal assistance** in investigations, prosecutions and judicial proceedings (article 18)



The UNTOC requires States parties to:



- Adopt (consistent with their legal and administrative systems) effective measures for purposes of effective law **enforcement (police-to-police) cooperation**, including by strengthening channels of communication between them (article 27)
- Consider entering into agreements or arrangements to carry out **joint investigations, prosecutions and proceedings** (article 27(2))
- Consider developing and sharing **analysis** of organized criminal activities with each other, and through international and regional organizations (article 28(2))
- Assist one another in planning and implementing **research and training** programmes (article 29(2))
- Strengthen activities through **international and regional organizations** and within other relevant bilateral and multilateral **agreements or arrangements** (article 29(4))

The UNTOC strongly encourages cooperative approaches to building capacity to give effect to the Protocol. Notably, article 30 calls upon States parties “to make concrete efforts to the extent possible and in coordination with each other, as well as with international and regional organizations” to:

- Strengthen capacity to prevent organised crime (article 30(2)(a))
- Enhance financial and material assistance to help each other (article 30(2)(b))
- Provide technical assistance to implement the Protocol (article 30(2)(c)), and
- Encourage and persuade other States and financial institutions to join them in assisting efforts to achieve the objectives of UNTOC (article 30(2)(d)).

The UNTOC also notes that such measures are without prejudice to other bilateral, regional or international commitments or arrangements (article 30(3)). Further, States may conclude bilateral or multilateral agreements to support their international cooperation to implement the UNTOC (article 30(4)).

Cooperation requirements under the SOM Protocol: Some of the cooperation requirements set out in the Smuggling Protocol concern cooperation specifically in responding to smuggling of migrants by sea, namely to:

- **Cooperate** to the fullest extent possible, in accordance with the international law of the sea (article 7)
- Render **assistance to a State party** that has the right to board a vessel flying its flag (article 8(1))
- **Inform** the flag State if it has boarded its vessel (article 8(3))
- **Respond** expeditiously to a request for determination of whether a vessel is entitled to claim its State as its State of registry (article 8(4))
- **Designate an authority** to assist or respond to a request for assistance concerning such vessels (article 8(6))



Primacy of life at sea in situations of smuggling of migrants at sea

The focus of articles 7 and 8 of the Smuggling Protocol on the activities of smugglers does not in any way detract from the obligation in both customary international law and in maritime law to rescue any person in distress at sea. In this respect, it is notable that the only measures that a State can take in relation to a vessel flagged to another State without the express authorization of the flag State, are those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or regional agreements (article 8(5)).¹⁰

Beyond the cooperation requirements related to smuggling of migrants by sea, are more general cooperation requirements for States to:

- **Exchange information** about smuggling of migrants with other States along smuggling routes, consistent with their domestic legal and administrative systems and comply with any requests made by States transmitting information (article 10)

¹⁰ For more information on protecting lives at sea including in the context of smuggling of migrants at sea, see: *Protecting Migrants at Sea: Practical Guide to Fulfilling International Obligations* (Bali Process RSO / IOM, 2020); *Thematic Briefing Note on People Smuggling and Trafficking in Persons at Sea* (Bali Process RSO, 2020).

- Strengthen cooperation between **border control** agencies, including by establishing direct communication channels (article 11(6))
- Verify within a reasonable time the legitimacy and validity of **documents** purported to be issued by them at the request of other States parties (article 13)
- Cooperate with each other and with competent international organizations and NGOs in providing or strengthening specialized **training** to combat smuggling of migrants (article 14(1))
- Cooperate at national, regional and international levels in promoting or strengthening development programmes to combat **root causes** of smuggling of migrants, including poverty and underdevelopment (article 15)
- Accept the **repatriation** of nationals and consider accepting those who have or have had the right of residence, including by verifying their status without unreasonable delay, readmitting them, and providing documents or authorizations needed to allow their repatriation (article 18)

States parties are also required to consider entering into other **bilateral or regional agreements** or operational arrangements to support implementation of the Smuggling Protocol, and to enhance its provisions among themselves (article 17). This later provision confirms that the Smuggling Protocol sets out a minimum that States are encouraged to exceed in cooperative efforts to address migrant smuggling.

UNTOC and the Smuggling Protocol as mechanisms for international cooperation

International cooperation on criminal justice matters can be based on reciprocity (through principles of good will and mutuality), on domestic law, on bilateral or regional treaties (e.g., the ASEAN Mutual Legal Assistance Treaty on Criminal Matters) or on international treaties (e.g. the UNTOC). States parties can use the UNTOC as a basis for international cooperation; article 18 is effectively a ‘mini treaty’ on mutual legal assistance. States that are party to the UNTOC and its Smuggling Protocol are therefore all potential partners against smuggling of migrants. Recognizing the essentiality of cooperation to combat transnational organized crime, Ministers and other representatives of Bali Process members acknowledge the need for robust mechanisms that promote international cooperation, including law enforcement cooperation, mutual legal assistance and extradition, to facilitate timely investigation and prosecution of offenders.¹¹ The Smuggling Protocol and the UNTOC that it supplements are robust mechanisms to achieve these forms of cooperation.

¹¹ Bali Declaration on People Smuggling, Trafficking in Persons and Related Transnational Crime (2016)



Understanding how to become party to the Smuggling Protocol

Ratification and accession

Ratification and accession to a treaty have the same force, but accession occurs after an instrument has already been negotiated and signed by other States. Given that it has already entered into force, the Smuggling Protocol can no longer be 'ratified', but States are able to now 'accede' to it.

Steps to accede to the Smuggling Protocol

States cannot become party to the Smuggling Protocol without first becoming party to the UNTOC. Almost every Bali Process Member States is party to the UNTOC. According to the *Vienna Convention on the Law of Treaties* (1969), accession requires only one simple step, being the deposit of an 'instrument of accession'. There is no standard form for such an instrument, but it is to include: the title, date and place where the treaty was concluded; the name and title of the person signing the instrument (being the Head of State, Head of government or Minister of Foreign Affairs or other person acting in such a position with full powers for that purpose); an expression of the intent of the Government on behalf of the State to consider itself bound by the treaty and to undertake to observe and implement its provisions; the date and place the instrument of accession was issued, and a signature. The instrument of accession becomes effective when it is deposited with the Secretary-General of the United Nations (article 21).

Notifications to the Secretary-General

Under the UNTOC, States parties are also required to notify the Secretary-General of whether it will use the UNTOC as a basis for extradition (UNTOC, article 16(5)(a)), the Central Authority designated for the purpose of mutual legal assistance (article 18(13)), and the authority or authorities that can assist other States parties in developing measures to prevent transnational organized crime (UNTOC, article 31(6)). Contact details of these authorities are shared among States parties to facilitate their cooperation.¹² Under the Smuggling Protocol, States are required to notify the Secretary-General of the central authority or authorities designated to receive and respond to requests for assistance, confirm registry or the right of a vessel to fly its flag, and authorize appropriate measures to be taken against smuggling of migrants at sea (Smuggling Protocol, article 8(6)).

¹² See the Online Directory of Competent National Authorities at:
<https://sherloc.unodc.org/cld/en/v3/sherloc/cnadir.html>



Conclusion

Smuggling of migrants is both a human security and a national security issue that affects citizens, societies and States across the Asia Pacific region. Criminal migrant smuggling networks traverse the region and transcend it, but thus far, a similarly robust and agile web of law enforcement response has not emerged to confront them. The Smuggling Protocol offers a roadmap for achieving the cooperation required to effectively prevent and combat smuggling of migrants.

States may not yet be party to the Smuggling Protocol for a range of reasons. Some may need stakeholders to better understand how smuggling of migrants affects their interests. States may also have concerns about having insufficient technical capacity to amend their legislation and build law enforcement, border and document control capacity.¹³ This concern is anticipated and addressed by the UNTOC. At their core the UNTOC and the Smuggling Protocols are instruments of cooperation, encouraging States parties to assist each other, along with international and regional organizations in building capacity to implement the UNTOC and its Protocols. The Bali Process RSO and UNODC stand ready to support its Bali Process Member States to access technical expertise from across its network of partners, and to better understand the Smuggling Protocol and build capacity to fulfil its requirements.

¹³ See for instance, Andreas Schloenhardt and Hamish MacDonald, Barriers to Ratification of the United Nations Protocol against the Smuggling of Migrants, *Asian Journal of International Law*, 7 (2017) 13 - 38.

Recommended Resources



Recommended resources

Reports about routes, trends and response to smuggling of migrants

Criminalisation of Smuggling of Migrants in ASEAN Member States (UNODC Regional Office for Southeast Asia and the Pacific, 2019)

An analysis of efforts undertaken to criminalize smuggling of migrants in Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Viet Nam.

Migrant Smuggling in Asia and the Pacific: Current trends and challenges (UNODC, 2018)

Research bringing together data and information from 40 countries and territories across the Asia-Pacific region, and provides insight into migrant smuggling routes and trends in the region as a whole.

Global Study on Smuggling of Migrants 2018 (UNODC, 2018)

A study based on review of data and literature from around the world, presenting information about land, air and sea smuggling routes, profiles of smugglers, their modus operandi and the risks that smuggled migrants face.

Issue Paper: Corruption and the Smuggling of Migrants (UNODC, 2013)

Evidence-based analysis of intersections between corruption and the smuggling of migrants, main challenges and good practices to confront them. Based on in-depth expert consultations with national and international practitioners.

Technical assistance tools to support response to smuggling of migrants

The Concept of Financial or Other Material Benefit in the Smuggling of Migrants Protocol (UNODC, 2017)

Guidance for criminal justice practitioners on interpreting and applying the 'financial or other material benefit' element of the definition of smuggling of migrants. Based on consultation with more than 100 experts in 13 countries with different legal traditions.

Policy Guide on Criminalizing Migrant Smuggling (Bali Process, 2014)

An introductory guide for policy makers and practitioners on how to implement international legal obligations to criminalize migrant smuggling in domestic law.

International Framework for Action to Implement the Smuggling of Migrants Protocol
(UNODC, 2014)

A tool to support States identify and address gaps in their response to smuggling of migrants, in accordance with international norms and standards. Sets out practical measures in relation to prosecution of migrant smugglers, protection of smuggled migrants, prevention of migrant smuggling and cooperation in these respects.

Assessment Guide to the Criminal Justice Response to the Smuggling of Migrants
(UNODC, 2012)

Comprehensive guidance for assessing a State's criminal justice response to smuggling of migrants, to support identification of gaps and facilitating technical assistance to respond to them.

Toolkit to Combat Smuggling of Migrants (UNODC, 2010)

A series of tools to offer guidance, promising practices and recommended resources for policy makers, law enforcers, judges, prosecutors, service providers and others, to support their efforts to implement the Smuggling of Migrants Protocol.

Legislative guides for the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (UNODC, 2004)

Guidance to assist States ratify and implement the UNTOC and its Protocols. Sets out requirements, and offers a range of legislative examples from different legal traditions. Based on inputs from a range of experts, institutions and governments.

Annex 1: Snapshot of the UNTOC and the Smuggling Protocol

GENERAL PROVISIONS	
UNTOC provisions	Smuggling Protocol provisions
	Article 1. Relation with the UNTOC
Article 1. Statement of purpose	Article 2. Statement of purpose
Article 2. Use of terms	Article 3. Use of terms
Article 3. Scope of application	Article 4. Scope of application
Article 4. Protection of sovereignty	

PROSECUTION	
UNTOC provisions	Smuggling Protocol provisions
	Article 5. Criminal liability of migrants
	Article 6. Criminalization
Article 5. Criminalization of participation in an organized criminal group	
Article 6. Criminalization of the laundering of proceeds of crime	
Article 7. Measures to combat money-laundering	
Article 8. Criminalization of corruption	
Article 9. Measures against corruption	
Article 10. Liability of legal persons	
Article 11. Prosecution, adjudication and sanctions	
Article 12. Confiscation and seizure	
Article 14. Disposal of confiscated proceeds of crime or property	
Article 15. Jurisdiction	
Article 20. Special investigative techniques	
Article 22. Establishment of criminal record	
Article 23. Criminalization of obstruction of justice	

PREVENTION	
UNTOC provisions	Smuggling Protocol provisions
	Article 11. Border measures
	Article 12. Security and control of documents
	Article 13. Legitimacy and validity of documents
	Article 14. Training and technical cooperation
Article 31. Prevention	Article 15. Other prevention measures

PROTECTION	
UNTOC provisions	Smuggling Protocol provisions
	Article 9. Smuggling of migrant at sea
	Article 16. Protection and assistance
	Article 18. Return of smuggled migrants
	Article 19. Saving clause
Article 24. Protection of witnesses	
Article 25. Assistance to and protection of victims	

COOPERATION	
UNTOC provisions	Smuggling Protocol provisions
	Article 7. Cooperation (in responding to smuggling of migrants at sea)
	Article 8. Measures against the smuggling of migrants at sea
	Article 10. Information
	Article 11. Border measures
	Article 13. Legitimacy and validity of documents
	Article 14. Training and technical cooperation
	Article 15. Other prevention measures
	Article 17. Agreements and arrangements
	Article 18. Return of smuggled migrants
Article 13. International cooperation for the purposes of confiscation	
Article 16. Extradition	
Article 17. Transfer of sentenced persons	
Article 18. Mutual legal assistance	
Article 19. Joint investigations	
Article 20. Special investigative techniques	
Article 21. Transfer of criminal proceedings	
Article 26. Measures to enhance cooperation with law enforcement authorities	
Article 27. Law enforcement cooperation	
Article 28. Collection, exchange and analysis of information on the nature of organized crime	
Article 29. Training and technical assistance	
Article 30. Other measures: implementation of the Convention through economic development and technical assistance	
Article 31. Prevention	

FINAL PROVISIONS	
UNTOC provisions	Smuggling Protocol provisions
	Article 19. Saving clause
Article 32. Conference of Parties to the Convention	
Article 33. Secretariat	
Article 34. Implementation of the Convention	
Article 37. Relation with protocols	
Article 35. Settlement of disputes	Article 20. Settlement of disputes
Article 36. Signature, ratification, acceptance, approval and accession	Article 21. Signature, ratification, acceptance, approval and accession
Article 38. Entry into force	Article 22. Entry into force
Article 39. Amendment	Article 23. Amendment
Article 40. Denunciation	Article 24. Denunciation
Article 41. Depositary and languages	Article 25. Depositary and languages

Annex 2: The difference between migrant smuggling and human trafficking

Smuggling of Migrants Protocol	Trafficking in Persons Protocol
Both Protocols supplement the United Nations Convention against Transnational Organized Crime (UNTOC)	
DEFINITIONS	
<p>Smuggling of migrants (also referred to as people smuggling, migrant smuggling or human smuggling) means:</p> <p>“...the <i>procurement</i>, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident”</p> <p><i>Article 3(a), Smuggling of Migrants Protocol</i></p>	<p>Trafficking in Persons (also referred to as human trafficking) means:</p> <p>“...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”</p> <p><i>Article 3(a), Trafficking in Persons Protocol</i></p>

PURPOSE of the protocols	
<ul style="list-style-type: none"> • Prevent and combat smuggling • Protect the rights of smuggled migrants • Promote cooperation among States <p><i>Article 2, Smuggling of Migrants Protocol</i></p>	<ul style="list-style-type: none"> • Prevent and combat trafficking • Protect and assist victims of trafficking • Promote cooperation among States <p><i>Article 2, Trafficking in Persons Protocol</i></p>
Criminal ELEMENTS	
<p><u>Act:</u></p> <ol style="list-style-type: none"> 1. The procurement of illegal entry of a person 2. Into a State of which that person is not a national or resident 3. <u>Purpose:</u> to obtain, directly or indirectly, a financial or other material benefit <p><i>Article 3, Smuggling of Migrants Protocol</i></p>	<p><u>1. Act:</u> Recruitment, transportation, transfer, harbouring or receipt of persons</p> <p><u>2. Means:</u> Threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person</p> <ul style="list-style-type: none"> • The means element is not required where the victim is less than 18 years old <p><u>3. Purpose:</u> Exploitation (including but not limited to the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs)</p> <ul style="list-style-type: none"> • The consent of an adult to exploitation is irrelevant where means have been used. <p><i>Article 3, Trafficking in Persons Protocol</i></p>
KEY POINTS to understanding	
<ol style="list-style-type: none"> 1. Smuggling is a transnational crime that involves facilitating another person's illegal border crossing to obtain financial or material benefit 2. There is no single profile of a smuggled migrant: smuggled migrants may be asylum seekers, refugees, economic migrants, or others 3. There is no single profile of a migrant smuggler but migrant smugglers <i>always</i> act for the purpose of financial or other material benefit. 4. Migrants are not 'victims' of smuggling, but may fall victim to other serious crimes while being smuggled, including human trafficking. 	<ol style="list-style-type: none"> 1. Trafficking does not necessarily involve a border crossing; trafficking may happen within a country 2. There is no single profile of a trafficked person: victims may be men, women, children, citizens, asylum seekers, refugees, or migrants in regular or irregular situations 3. There is no single profile of a human trafficker 4. Trafficking can be for <i>any</i> exploitative purpose 5. Not all people who are exploited are trafficked 6. A person can consent to being exploited, and still be a victim of trafficking.

Annex 3: States parties to the Smuggling of Migrants Protocol

The following list of States parties to the Smuggling of Migrants Protocol is current as at January 2021. Source: <https://treaties.un.org>

State	Signature	Ratification, Acceptance(A), Approval (AA), Accession(a), Succession(d)
Afghanistan		2 Feb 2017 a
Albania	12 Dec 2000	21 Aug 2002
Algeria	6 Jun 2001	9 Mar 2004
Angola		19 Sep 2014 a
Antigua and Barbuda		17 Feb 2010 a
Argentina	12 Dec 2000	19 Nov 2002
Armenia	15 Nov 2001	1 Jul 2003
Australia	21 Dec 2001	27 May 2004
Austria	12 Dec 2000	30 Nov 2007
Azerbaijan	12 Dec 2000	30 Oct 2003
Bahamas	9 Apr 2001	26 Sep 2008
Bahrain		7 Jun 2004 a
Barbados	26 Sep 2001	11 Nov 2014
Belarus	14 Dec 2000	25 Jun 2003
Belgium	12 Dec 2000	11 Aug 2004
Belize		14 Sep 2006 a
Benin	17 May 2002	30 Aug 2004
Bolivia (Plurinational State of)	12 Dec 2000	
Bosnia and Herzegovina	12 Dec 2000	24 Apr 2002
Botswana	10 Apr 2002	29 Aug 2002
Brazil	12 Dec 2000	29 Jan 2004
Bulgaria	13 Dec 2000	5 Dec 2001
Burkina Faso	15 Dec 2000	15 May 2002
Burundi	14 Dec 2000	24 May 2012
Cabo Verde	13 Dec 2000	15 Jul 2004

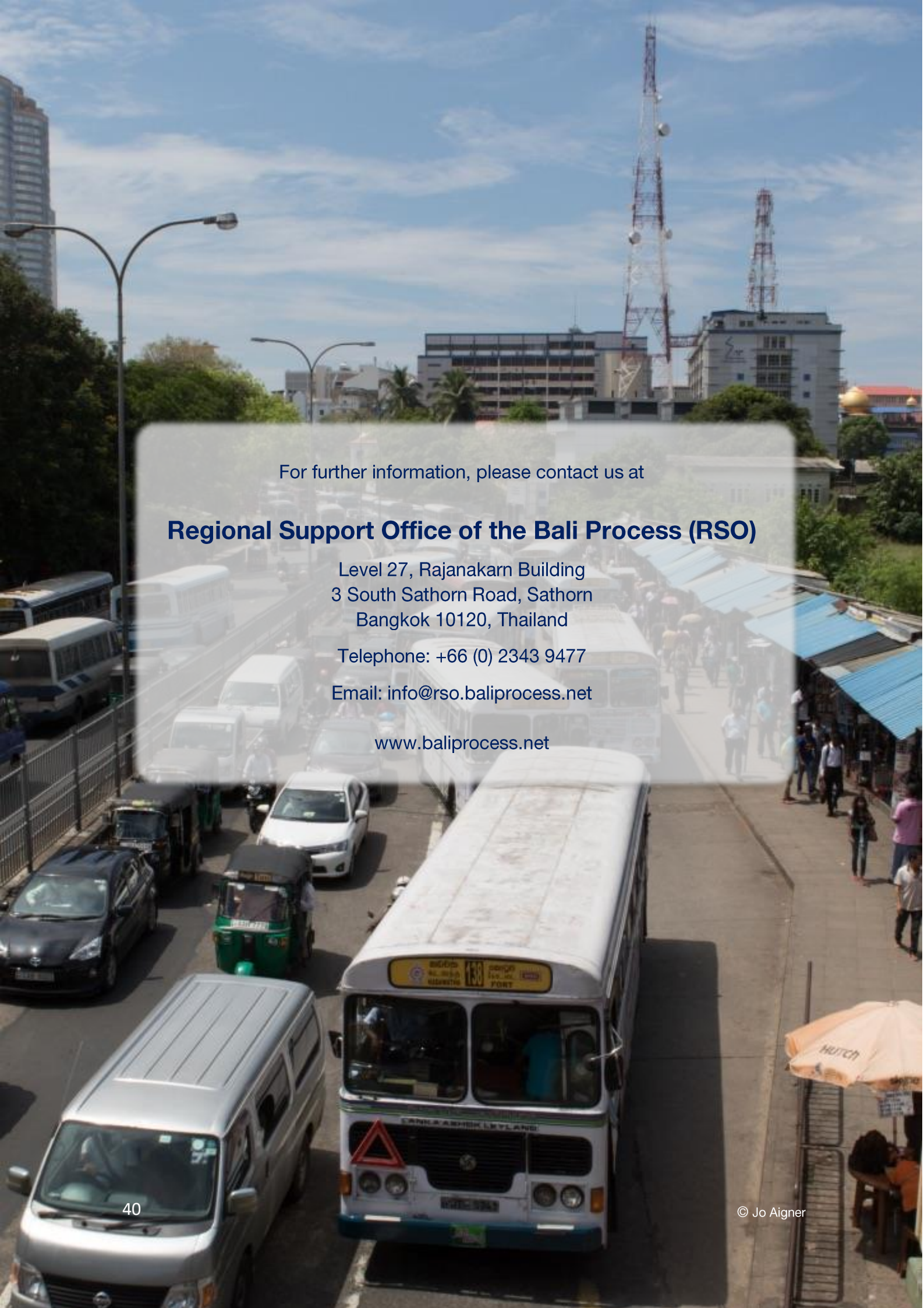
State	Signature	Ratification, Acceptance(A), Approval (AA), Accession(a), Succession(d)
Cambodia	11 Nov 2001	12 Dec 2005
Cameroon	13 Dec 2000	6 Feb 2006
Canada	14 Dec 2000	13 May 2002
Central African Republic		6 Oct 2006 a
Chile	8 Aug 2002	29 Nov 2004
Comoros		15 Dec 2020 a
Congo	14 Dec 2000	
Costa Rica	16 Mar 2001	7 Aug 2003
Côte d'Ivoire		8 Jun 2017 a
Croatia	12 Dec 2000	24 Jan 2003
Cuba		20 Jun 2013 a
Cyprus	12 Dec 2000	6 Aug 2003
Czech Republic	10 Dec 2002	24 Sep 2013
Democratic Republic of the Congo		28 Oct 2005 a
Denmark	12 Dec 2000	8 Dec 2006
Djibouti		20 Apr 2005 a
Dominica		17 May 2013 a
Dominican Republic	15 Dec 2000	10 Dec 2007
Ecuador	13 Dec 2000	17 Sep 2002
Egypt		1 Mar 2005 a
El Salvador	15 Aug 2002	18 Mar 2004
Equatorial Guinea	14 Dec 2000	
Estonia	20 Sep 2002	12 May 2004
Eswatini	8 Jan 2001	24 Sep 2012
Ethiopia		22 Jun 2012 a
European Union	12 Dec 2000	6 Sep 2006 AA
Fiji		19 Sep 2017 a
Finland	12 Dec 2000	7 Sep 2006 A
France	12 Dec 2000	29 Oct 2002

State	Signature	Ratification, Acceptance(A), Approval (AA), Accession(a), Succession(d)
Gabon		10 May 2019 a
Gambia	14 Dec 2000	5 May 2003
Georgia	13 Dec 2000	5 Sep 2006
Germany	12 Dec 2000	14 Jun 2006
Ghana		21 Aug 2012 a
Greece	13 Dec 2000	11 Jan 2011
Grenada		21 May 2004 a
Guatemala		1 Apr 2004 a
Guinea		8 Jun 2005 a
Guinea-Bissau	14 Dec 2000	
Guyana		16 Apr 2008 a
Haiti	13 Dec 2000	19 Apr 2011
Honduras		18 Nov 2008 a
Hungary	14 Dec 2000	22 Dec 2006
Iceland	13 Dec 2000	
India	12 Dec 2002	5 May 2011
Indonesia	12 Dec 2000	28 Sep 2009
Iraq		9 Feb 2009 a
Ireland	13 Dec 2000	
Italy	12 Dec 2000	2 Aug 2006
Jamaica	13 Feb 2002	29 Sep 2003
Japan	9 Dec 2002	11 Jul 2017 A
Kazakhstan		31 Jul 2008 a
Kenya		5 Jan 2005 a
Kiribati		15 Sep 2005 a
Kuwait		12 May 2006 a
Kyrgyzstan	13 Dec 2000	2 Oct 2003
Lao People's Democratic Republic		26 Sep 2003 a
Latvia	10 Dec 2002	23 Apr 2003

State	Signature	Ratification, Acceptance(A), Approval (AA), Accession(a), Succession(d)
Lebanon	26 Sep 2002	5 Oct 2005
Lesotho	14 Dec 2000	24 Sep 2004
Liberia		22 Sep 2004 a
Libya	13 Nov 2001	24 Sep 2004
Liechtenstein	14 Mar 2001	20 Feb 2008
Lithuania	25 Apr 2002	12 May 2003
Luxembourg	12 Dec 2000	24 Sep 2012
Madagascar	14 Dec 2000	15 Sep 2005
Malawi		17 Mar 2005 a
Mali	15 Dec 2000	12 Apr 2002
Malta	14 Dec 2000	24 Sep 2003
Mauritania		22 Jul 2005 a
Mauritius		24 Sep 2003 a
Mexico	13 Dec 2000	4 Mar 2003
Monaco	13 Dec 2000	5 Jun 2001
Mongolia		27 Jun 2008 a
Montenegro		23 Oct 2006 d
Mozambique	15 Dec 2000	20 Sep 2006
Myanmar		30 Mar 2004 a
Namibia	13 Dec 2000	16 Aug 2002
Nauru	12 Nov 2001	12 Jul 2012
Netherlands	12 Dec 2000	27 Jul 2005 A
New Zealand	14 Dec 2000	19 Jul 2002
Nicaragua		15 Feb 2006 a
Niger		18 Mar 2009 a
Nigeria	13 Dec 2000	27 Sep 2001
North Macedonia	12 Dec 2000	12 Jan 2005
Norway	13 Dec 2000	23 Sep 2003
Oman		13 May 2005 a
Palau		27 May 2019 a

State	Signature	Ratification, Acceptance(A), Approval (AA), Accession(a), Succession(d)
Panama	13 Dec 2000	18 Aug 2004
Paraguay		23 Sep 2008 a
Peru	14 Dec 2000	23 Jan 2002
Philippines	14 Dec 2000	28 May 2002
Poland	4 Oct 2001	26 Sep 2003
Portugal	12 Dec 2000	10 May 2004
Republic of Korea	13 Dec 2000	5 Nov 2015
Republic of Moldova	14 Dec 2000	28 Feb 2006 a
Romania	14 Dec 2000	4 Dec 2002
Russian Federation	12 Dec 2000	26 May 2004
Rwanda	14 Dec 2000	4 Oct 2006
San Marino	14 Dec 2000	20 Jul 2010
Sao Tome and Principe		12 Apr 2006 a
Saudi Arabia	10 Dec 2002	20 Jul 2007
Senegal	13 Dec 2000	27 Oct 2003
Serbia	12 Dec 2000	6 Sep 2001
Seychelles	22 Jul 2002	22 Jun 2004
Sierra Leone	27 Nov 2001	12 Aug 2014
Slovakia	15 Nov 2001	21 Sep 2004
Slovenia	15 Nov 2001	21 May 2004
South Africa	14 Dec 2000	20 Feb 2004
Spain	13 Dec 2000	1 Mar 2002
Sri Lanka	13 Dec 2000	
St. Kitts and Nevis		21 May 2004 a
St. Vincent and the Grenadines	20 Nov 2002	29 Oct 2010
Sudan		9 Oct 2018 a
Suriname		25 May 2007 a
Sweden	12 Dec 2000	6 Sep 2006
Switzerland	2 Apr 2002	27 Oct 2006
Syrian Arab Republic	13 Dec 2000	8 Apr 2009

State	Signature	Ratification, Acceptance(A), Approval (AA), Accession(a), Succession(d)
Tajikistan		8 Jul 2002 a
Thailand	18 Dec 2001	
Timor-Leste		9 Nov 2009 a
Togo	12 Dec 2000	28 Sep 2010
Trinidad and Tobago	26 Sep 2001	6 Nov 2007
Tunisia	13 Dec 2000	14 Jul 2003
Turkey	13 Dec 2000	25 Mar 2003
Turkmenistan		28 Mar 2005 a
Uganda	12 Dec 2000	
Ukraine	15 Nov 2001	21 May 2004
United Kingdom of Great Britain and Northern Ireland	14 Dec 2000	9 Feb 2006
United Republic of Tanzania	13 Dec 2000	24 May 2006
United States of America	13 Dec 2000	3 Nov 2005
Uruguay	13 Dec 2000	4 Mar 2005
Uzbekistan	28 Jun 2001	
Venezuela (Bolivarian Republic of)	14 Dec 2000	19 Apr 2005
Zambia		24 Apr 2005 a



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