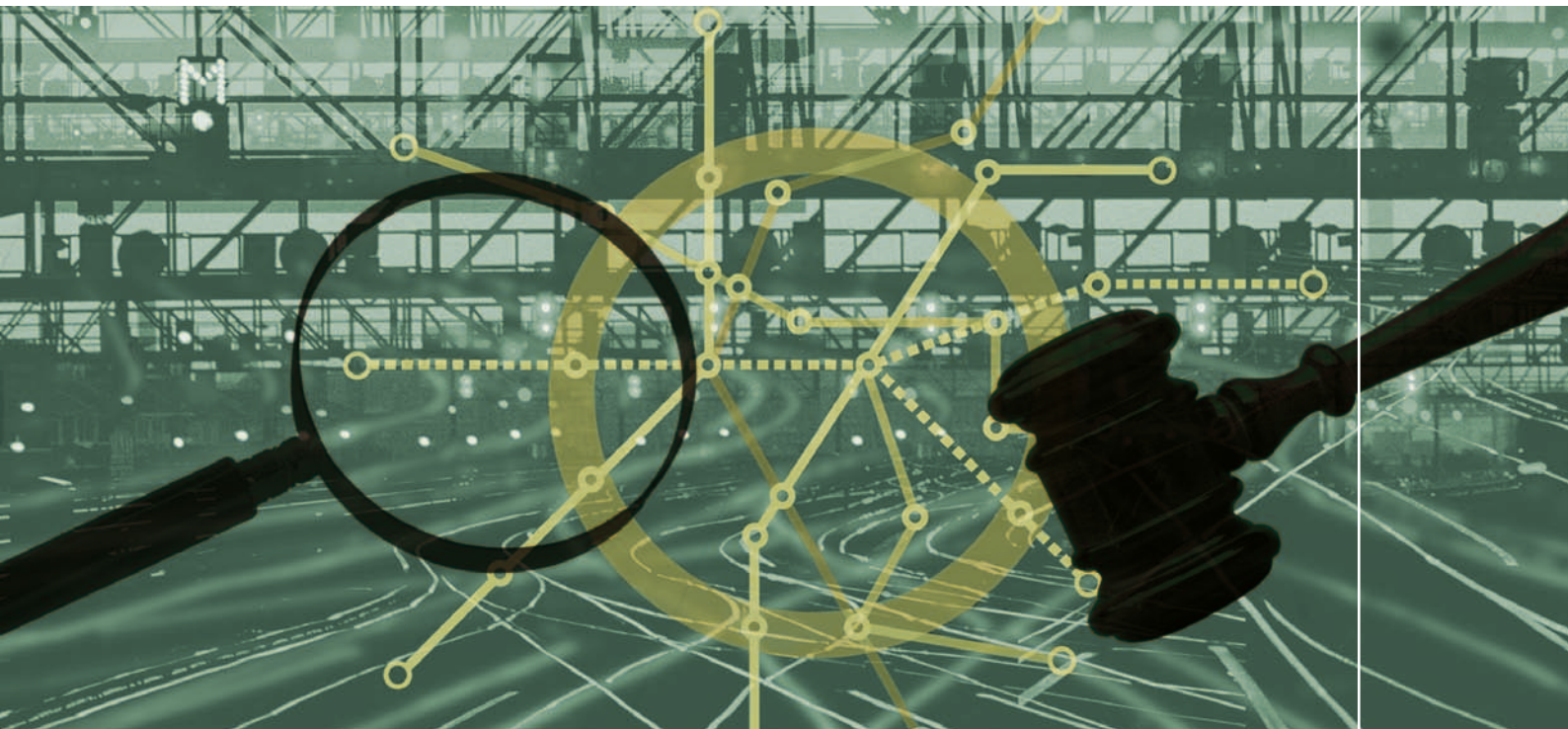




UNODC

United Nations Office on Drugs and Crime



Basic training manual on investigating and prosecuting the smuggling of migrants

Overview of modules
Explanatory notes
Introduction



This publication is made possible through funding received from the European Union.

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Basic training manual on investigating and prosecuting the smuggling of migrants

Overview of modules
Explanatory notes
Introduction



UNITED NATIONS
New York, 2010

© United Nations Office on Drugs and Crime, May 2010.

The description and classification of countries and territories in this study and the arrangement of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic system or degree of development.

Publishing production: UNOV/DM/CMS/EPLS/Electronic Publishing Unit.

Acknowledgements

This basic training manual would not exist without the generous financial support of the European Union and the technical support of the European Police Office (Europol), the International Criminal Police Organization (INTERPOL) and the United Kingdom Serious Organised Crime Agency (SOCA).

The manual was drafted by Mike Price (SOCA) and by Marika McAdam (Anti-Human Trafficking and Migrant Smuggling Unit of the United Nations Office on Drugs and Crime (UNODC)) and Sebastian Baumeister (Africa and the Middle East Unit of UNODC). Valuable contributions were made by Riikka Puttonen of the Anti-Human Trafficking and Migrant Smuggling Unit. Marine Mayer and Thomas O’Leary provided editorial support.

The training modules are the product of a broad participatory process involving experts in the areas of law enforcement and prosecution from several regions of the world. Those experts contributed their time, imparted their expertise, shared their experiences and brought boundless energy and enthusiasm to the process of elaborating the modules. UNODC is profoundly grateful not only for their dedication in the context of working meetings held in Egypt, Nigeria and Senegal, but also for their having remained committed to the initiative by providing feedback, commentary and suggestions throughout the process of generating tangible and practical modules.

Experts

Juliana Abah, Nigeria

Gordon Adam, United Kingdom of Great Britain and Northern Ireland

Laud Ofori Affrifah, Ghana

Ayman Abou Alam, Egypt

Mohammed Babandede, Nigeria

Mehdi Salah-Eddine Ben Cherif, Algeria

Adelaide Dembele, Burkina Faso

Seynabou Ndiaye Diakhate, Senegal

Patricia Dvoracek, Switzerland

John Sunday Egwu, Nigeria

Ashraf El Sayed, Egypt

Tony Elumelu, Economic Community of West African States

Hakan Erdal, Turkey

Nagah Fawzy, Egypt

Anna Semou Faye, Senegal

Monia Ammar Feki, Tunisia

Petra Follmar-Otto, German Institute for Human Rights

Rajab Gadmour, Libyan Arab Jamahiriya

Nick Garlick, European Police Office (Europol)

Sabien Gauquie, Belgium

Stéphane Gay, France

Ndiame Gaye, Senegal
Hany Fathy Georgy, Egypt
Marcelo Gomez Chao, Spain
Essam Saad Ibrahim, Egypt
Mikael Jensen, Europol
Abah Juliana, Nigeria
Hamidou Gogouna Kansaye, Mali
J.N.A. (Jos) Klappe, Netherlands
Anja Klug, Office of the United Nations High Commissioner for Refugees
Michael Lind, Denmark
Ruth A. McGuirl, Canada
Paul McLennan, United Kingdom of Great Britain and Northern Ireland
Paulino Mendes, Guinea-Bissau
Michele Mollo, International Criminal Police Organization (INTERPOL)
Ahmed Bashir Musa, Libyan Arab Jamahiriya
Donald A. Ngegba, Sierra Leone
Patricia Olalla Fernández, Spain
Augustine Oyoloto, European Commission
Indira Pires, Cape Verde
Michael Price, United Kingdom of Great Britain and Northern Ireland
Alfredo Raimo, Italy
Abdeljouad Raissi, Morocco
Stephen Richardson, Australia
Ulrich Seidel, Germany
Kimberly Sellers, United States of America
Geneviève Sissoko-Diallo, Côte d'Ivoire
Marie Claude Steffann, France
Terna Tsumba, Nigeria
Steve Wilkinson, United Kingdom of Great Britain and Northern Ireland

United Nations Office on Drugs and Crime

Mohamed Abdul-Aziz	Antonio L. Mazzitelli
Hyginus Amaechi	Marika McAdam
Sebastian Baumeister	Papa Babacar Ndiaye
Virginia De Abajo Marques	Macario Perdigao
Seynabou Ndiaye Diakhate	Riikka Puttonen
Ndeye Khady Diop	Zeinab Sabet
Julien Garsany	Fatim Tall
Ahmed Ghanem	Dagmar Thomas
Anne Ikpeme	Leif Villadsen
Abdou Salam Konate	

Overview of modules

Introduction

- A. The smuggling of migrants is a deadly business
- B. Importance of increasing the focus of law enforcement efforts on investigating and prosecuting smuggling networks
- C. Addressing the smuggling of migrants needs a comprehensive approach
- D. About the *manual*

Module 1. Concepts and categories of the smuggling of migrants and related conduct

- A. Learning objectives
 - B. Definition of smuggling of migrants
 - C. Key differences between smuggling of migrants and trafficking in persons
 - D. Categories of smuggling of migrants
 - E. Actors and their roles in the smuggling process
 - F. Concluding remarks
- Self-assessment questions

Module 7. Legislative issues

- A. Learning objectives
 - B. Legislative background
 - C. Other offences
 - D. Prosecution matters
 - E. Concluding remarks
- Self-assessment questions

Module 8. International cooperation

- A. Learning objectives
- B. Types of international cooperation
- C. Framework for international cooperation
- D. Informal cooperation
- E. Extradition
- F. Mutual legal assistance

- G. Central authorities
- H. Information-sharing
- I. Joint investigation teams
- J. Challenges of international cooperation
- K. Concluding remarks
- Self-assessment questions

Module 9. Human rights

- A. Learning objectives
- B. Human rights and law enforcement
- C. Human rights of smuggled migrants
- D. Human rights of (suspected) smugglers of migrants
- E. Limiting human rights
- F. Concluding remarks
- Self-assessment questions

Annexes

- I. Witness statement
- II. Planning and strategizing
- Glossary

Explanatory Notes

EC	European Commission
ECOWAS	Economic Community of West African States
EU	European Union
Europol	European Police Office
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
OCRIEST	Central Office for the Repression of Illegal Immigration and Employment of Foreigners without Residence Permits
UNHCR	Office of the United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
1951 Convention	Convention relating to the Status of Refugees
1967 Protocol	1967 Protocol relating to the Status of Refugees

Introduction

“Fifty-four . . . migrants have been found dead after suffocating in a lorry smuggling them . . .”

“More than 100 people were packed into a container measuring 6m by 2m. Many of the survivors are seriously ill from dehydration and lack of oxygen.

“The driver opened the doors of the vehicle after the migrants banged on the walls—but he fled on foot when he saw what had happened.

. . .

“ . . . [Survivors] said they tried to bang on the walls of the container to tell the driver they were dying, but he told them to shut up as police would hear them when they crossed through checkpoints . . .

“ . . . A 30-year-old survivor told . . . how he believed everyone would perish in the lorry.

“I thought everyone was going to die. I thought I was going to die. If the truck had driven for 30 minutes more, I would have died for sure. . . .”¹

Migration is one of the great driving forces of human progress and development. The movement of people around the globe has contributed many stories to the shared history of humanity. People have moved all over the world for a variety of reasons: for example, to increase their economic opportunities, to provide their children with an education, to found a family, to embark on an adventure or to seek protection. In turn, migration has led to the proliferation of languages, cultures, cuisines and ideas throughout the world. Global migration today is one of the great by-products of globalization, and yet the exploitation of it by profit-seeking criminals represents a darker side of the phenomenon.

A. The smuggling of migrants is a deadly business

Not all persons who migrate have the legal opportunities to do so. Profit-seeking criminals take advantage of this and smuggle migrants. Virtually every country in the world is affected by the smuggling of migrants, as a country of origin, transit, destination or all three. Smuggled migrants may be refugees. Smuggled migrants may become victims of crime during the smuggling process or as a result of the smuggling process. Their consent to be smuggled does not mean that they have necessarily consented to the treatment they received throughout the process. Smuggled migrants are vulnerable to exploitation and their lives are often put at risk: thousands of smuggled migrants have suffocated in containers, perished in deserts or drowned at sea. Smugglers of migrants often conduct their activities with little or no regard for the lives of the people whose hardship

¹BBC “Burma migrants suffocate in lorry,” 10 April 2008. Available from <http://news.bbc.co.uk/2/hi/asia-pacific/7339939.stm>.

has created a demand for smuggling services. Survivors have told harrowing tales of their ordeal: people crammed into windowless storage spaces, forced to sit still in urine, seawater, faeces or vomit, deprived of food and water, while others around them die and their bodies are discarded at sea or on the roadside. The smuggling of migrants and the activities related to it generate enormous profits for the criminals involved and fuel corruption and organized crime. Smuggling of migrants is a deadly business.

B. Importance of increasing the focus of law enforcement efforts on investigating and prosecuting smuggling networks

The information currently available is too scattered and incomplete to paint an accurate picture of the number of people who are smuggled each year and the routes and methods used by those who smuggle them. However, the evidence available reveals the following trends and patterns:

- Criminals are increasingly providing smuggling services to irregular migrants to evade national border controls, migration regulations and visa requirements. Most irregular migrants resort to the assistance of profit-seeking smugglers. As border controls are improved, migrants are deterred from attempting to cross borders illegally on their own and are diverted into the hands of smugglers.
- The smuggling of migrants is a highly profitable business in which criminals are at low risk of detection and punishment. As a result, the crime is becoming increasingly attractive to criminals. Smugglers of migrants are becoming more and more organized, establishing professional networks that transcend borders and regions.
- Smugglers of migrants constantly change routes and methods in response to changed circumstances, often at the expense of the safety of the smuggled migrants.
- Thousands of people have lost their lives as a result of the indifferent or even deliberate actions of smugglers of migrants.

These factors highlight the need for responses to combat the crime of the smuggling of migrants to be coordinated across and between regions. They also highlight the need to complement border controls by increasing the focus of law enforcement efforts on the investigation and prosecution of smuggling networks so as to dismantle criminal organizations and change the conditions in which they can flourish.

C. Addressing the smuggling of migrants needs a comprehensive approach

The United Nations Office on Drugs and Crime (UNODC) is aware of the fact that law enforcement measures alone cannot prevent the smuggling of migrants. If they are not part of a holistic approach, increased border controls may simply have the result of diverting migrant smuggling routes and of increasing the demand for more risky services. Where migrants are simply returned to their countries of nationality or residence without consideration for the underlying root causes that made them migrate, they may simply attempt to migrate again, perhaps under more dangerous conditions. There are important push-and-pull factors that influence a person to become a smuggled migrant. All of them must be addressed in a comprehensive way, based on a

multidimensional partnership, which has to involve States, civil society, academia, the media, state institutions and international organizations.

The primary goal of UNODC as the guardian of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children² and the Protocol against the Smuggling of Migrants by Land, Sea and Air,³ both supplementing the United Nations Convention against Transnational Organized Crime,⁴ with respect to combating the smuggling of migrants is to promote global adherence to the Smuggling of Migrants Protocol and to assist States in their efforts to implement it effectively. As outlined in article 2:

“The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.”

D. About the *manual*

Against the backdrop of the Smuggling of Migrants Protocol, and as part of a larger, comprehensive response, UNODC launched a process in 2008 to elaborate basic training modules on preventing and combating the smuggling of migrants. The process was undertaken in cooperation with the International Criminal Police Organization (INTERPOL), the European Police Office (Europol) and the United Kingdom Serious Organised Crime Agency (SOCA) and, most importantly, with the active participation of experienced practitioners working all over the world to investigate and prosecute those who smuggle migrants. Three working meetings were organized in Egypt, Nigeria and Senegal involving investigators and prosecutors from 30 countries, including both common- and civil-law countries.

The present *manual* is the result of this process.

It covers the following thematic areas:

- *Concepts and categories of the smuggling of migrants and related conduct*, focusing on definitions and the constituent elements of the offence of the smuggling of migrants and related conduct and main categories of *modi operandi* of smuggling of migrants.
- *Role of smuggled migrants and smugglers of migrants in investigations*, focusing on debriefing smuggled migrants; protecting smuggled migrants as witnesses of crime; understanding the limitations of smuggled migrants' role as witnesses; recognizing the challenges in seeking the cooperation of smugglers of migrants and smuggled migrants; and alternative sources of evidence.
- *Investigative approaches*: points of entry for investigation; proactive and reactive investigation techniques; and disruptive techniques.
- *Financial investigation*: parallel financial investigations; financial investigations in the pre-arrest phase; seizure of assets and confiscation of proceeds of crime; and the role of financial investigations in investigating the smuggling of migrants generally.
- *Covert investigative techniques*: use of informants; controlled delivery; and surveillance and undercover operations.

²United Nations, *Treaty Series*, vol. 2237, No. 39574.

³*Ibid.*, vol. 2241, No. 39574.

⁴*Ibid.*, vol. 2225, No. 39574.

- *Intelligence*: types of strategic and tactical intelligence necessary to combat smuggling of migrants; and improving the gathering, analysis, use and sharing of information.
- *Legislative issues*: regulatory and legislative background relevant when investigating and prosecuting; alternative offences that can be used to prosecute smugglers of migrants in the absence of specific legislation; and rights of migrants.
- *International cooperation*: international cooperation through informal cooperation mechanisms; international cooperation through formal mechanisms (mutual legal assistance); establishing joint investigation teams; and inter-agency cooperation.
- *Human rights*: human rights that are relevant in investigating and prosecuting the smuggling of migrants, in particular the human rights of smuggled migrants and the rights of suspected smugglers of migrants; principles relating to the protection of refugees; and the role of law enforcers and prosecutors in protecting and promoting human rights.

The modules are complemented by an example of a witness statement (annex I), some basic considerations to be taken into account at the start of an investigation into the smuggling of migrants (annex II on planning and strategizing) and a glossary.

The purpose of this *manual* is threefold. First, it has been designed to be a reference tool for self-study that provides a basic introduction to the subject of investigating and prosecuting the smuggling of migrants. Secondly, it was conceptualized for use in training investigators and prosecutors in preventing and combating the smuggling of migrants. Since there is no “one size fits all” solution to building capacity to investigate and prosecute the smuggling of migrants, the third objective of UNODC in elaborating this basic training manual is to provide a solid basis of knowledge that can be adapted to a country’s specific context. The *Manual* has been designed in such a way that individual modules can be adapted to the needs of different regions and countries and can serve as the basis for upgrading or supplementing the training programmes of national training institutes. UNODC stands ready to assist national institutions in this adaptation process.

The *manual* is the result of a highly active and successful cooperative effort. The *Manual* could not have been developed without the dedication and commitment of all those who shared their knowledge and experiences throughout this process.

It is hoped that the improvement of the *manual* will take place in the same spirit of collaboration. To that end, UNODC would appreciate receiving any suggestions that readers might have for future versions of the *Manual*. Relevant material, case studies, information on best practices and general or specific suggestions may be sent by e-mail to UNODC at ahtmsu@unodc.org.



UNODC

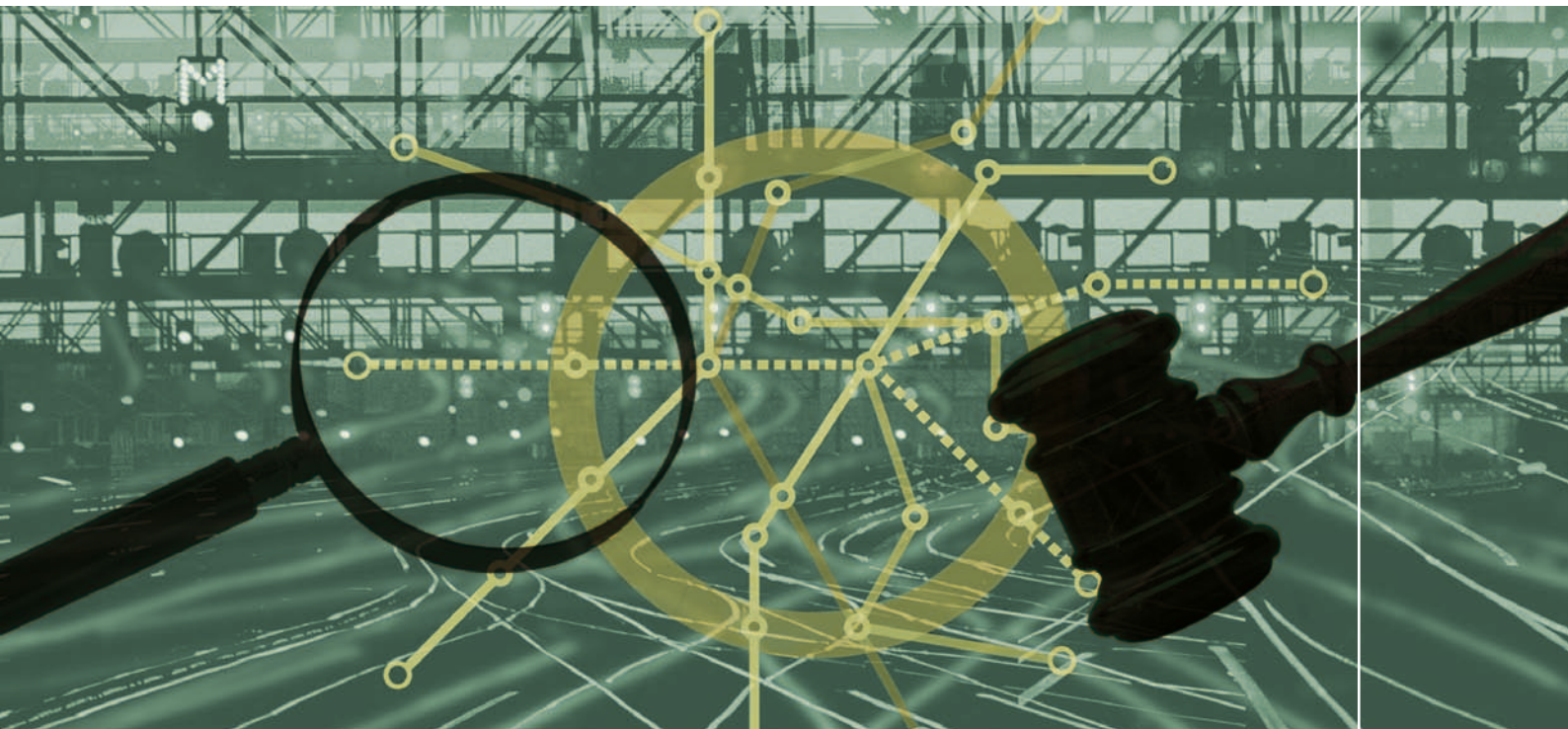
United Nations Office on Drugs and Crime

Vienna International Centre, PO Box 500, 1400 Vienna, Austria
Tel.: (+43-1) 26060-0, Fax: (+43-1) 26060-5866, www.unodc.org



UNODC

United Nations Office on Drugs and Crime



Basic training manual on investigating and prosecuting the smuggling of migrants

Module 1
Concepts and categories of the smuggling
of migrants and related conduct



This publication is made possible through funding received from the European Union.

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Basic training manual on investigating and prosecuting the smuggling of migrants

Module 1:

Concepts and categories of the smuggling of migrants and
related conduct



UNITED NATIONS
New York, 2010

© United Nations Office on Drugs and Crime, May 2010.

The description and classification of countries and territories in this study and the arrangement of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic system or degree of development.

Publishing production: UNOV/DM/CMS/EPLS/Electronic Publishing Unit.

Module 1. Concepts and categories of the smuggling of migrants and related conduct

A. Learning objectives

The aim of module 1, entitled “Concepts and categories of the smuggling of migrants and related categories”, is to define the term smuggling of migrants in the light of the Smuggling of Migrants Protocol. It is also intended to raise the reader’s awareness of the different forms that the smuggling of migrants and related conduct can take.

At the end of the present module, the reader will be able to understand:

- The basic elements of criminal conduct that constitutes the smuggling of migrants and related conduct.
- The fact that the organization of the smuggling of migrants and related conduct can take various forms.
- The roles of the different actors involved in a smuggling operation.
- The substantial differences between trafficking in persons and the smuggling of migrants and related conduct.

B. Definition of smuggling of migrants

What is the smuggling of migrants?

Awareness of the constituent elements of the smuggling of migrants and related conduct is a prerequisite for identifying, investigating and prosecuting the crime.

Article 3 of the Smuggling of Migrants Protocol defines smuggling of migrants as:

“The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national”.

Article 6 of the Protocol requires the criminalization of this conduct.

In addition, article 6 requires States to criminalize the following conduct:

“Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State” by illegal means.

To sum up, article 6 requires States parties to establish as an offence or as offences the following conduct:

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

In short, the combination of all of the following elements constitutes the smuggling of migrants and related conduct

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

Throughout these training modules, when the term “smuggling of migrants” is used, it refers to all the elements that constitute the smuggling of migrants and related conduct.

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

During the negotiation of the Protocol, States discussed the inclusion of the procurement of illegal residence in article 3 before eventually agreeing on covering this aspect under article 6.

! By virtue of article 5, migrants shall not become liable to criminal prosecution under the Smuggling of Migrants Protocol. It is therefore to be understood that the Protocol aims to target the smugglers of migrants, not the people being smuggled.

Should investigators be faced with a set of circumstances that does not allow them to pursue migrant smuggling offences (e.g. there is no existing specific national law and/or evidence of one of the key migrant smuggling elements is missing), then they must rely on evidence of the commission of other offences prohibited by national law.

Some of those offences are outlined in module 7.

For more detailed information about the criminalization requirements contained in the Smuggling of Migrants Protocol, see module 7.

What is not smuggling of migrants?

It is important to underline that the criminalization only covers those who profit from the smuggling of migrants and related conduct through financial or other material gain. The interpretative notes for the official records of the negotiations of the Smuggling of Migrants Protocol highlight that the criminalization should not cover persons such as family members or non-governmental or religious groups that facilitate the illegal entry of migrants for humanitarian or non-profit reasons.

The Smuggling of Migrants Protocol does not intend to criminalize migration as such. In this regard, article 5 states that the migrants themselves must not be held responsible for the crime of smuggling only because of having been smuggled:

“Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.”

This article was included to make it explicit that no one should be penalized with reference to this Protocol for having been smuggled.

It should also be noted that refugees often have to rely on smugglers to flee persecution, serious human rights violations or conflict. They should not be criminalized for making use of smugglers or for their illegal entry (article 31 of the 1951 Convention relating to the Status of Refugees¹ and article 19 of the Smuggling of Migrants Protocol).



Case study

Fishing boats land carrying hundreds of irregular migrants

The third of four boats carrying irregular migrants from an East Asian country arrived off the coast of an island of the destination country, in North America. The boat was apprehended after it made a dangerous manoeuvre through the reef-strewn waters in the dark.

On board were 190 persons travelling without valid travel documents. Each passenger owed \$30,000-\$40,000 to the smugglers for transportation costs. One of the accused was the captain of the vessel and the other two were organizers and enforcers on board. The vessel was unsafe, unseaworthy and unsanitary. Passengers were provided with inadequate food and water throughout their journey.

Of the 190 persons on board, only 3 were found to be refugees according to the 1951 Convention.

The cost of the apprehension of the vessel and the processing of the irregular migrants, exclusive of the cost of the trial, was in the range of \$10 million.

¹United Nations, *Treaty Series*, vol. 189, No. 2545.

News stories illustrate cases that are not smuggling of migrants in terms of the Smuggling of Migrants Protocol.



Case study

Man sentenced on charge of smuggling people

In Anyland, it is illegal for any citizen to leave the country without permission.

A man from Anyland was sentenced to six years in prison for allegedly working for a gang that “smuggled” persons out of their country.



Case study

Sicilian trawler and Office of the United Nations High Commissioner for Refugees help in the rescue of 27 migrants from Eastern Africa

Sicilian fishing boat captain Gaspare Marrone was fishing with his crew south of Italy's Lampedusa Island when they spotted a boat in distress. The Sicilians started bringing the 30 migrants on board, but in the process the boat capsized and 3 people were unaccounted for. Nicola Asaro, another Sicilian captain fishing in the area, called Laura Boldrini, Senior Regional Public Information Officer of the Office of the United Nations High Commissioner for Refugees (UNHCR), by satellite phone and told her that Marrone and his crew were trying to mount a rescue operation but were having difficulties. Boldrini passed the information (including the coordinates of Marrone's fishing boat) to the Italian coastguard and navy, who sent help. Marrone detached his boat from the tuna pen it was towing and rescued 20 men and 7 women. The migrants were taken to Porto Empedocle in Sicily after being moved onto a navy vessel.

Both Asaro and Marrone were each presented with the Per Mare Award for their efforts. The Per Mare Award was established to resolve the problem whereby boat people in distress in the Mediterranean are often ignored by commercial vessels whose crews fear investigations into their role in irregular migration.



Questions and exercises

- Has your country signed and ratified the United Nations Convention against Organized Crime and the Smuggling of Migrants Protocol? If so, when?
- Is there legislation criminalizing the smuggling of migrants and related conduct in your country?
If so, what are the elements of the offence of the smuggling of migrants according to your national legislation?
- Explain in your own words what the smuggling of migrants is.
- Consider the three case studies above. Which cases do you consider to be cases involving the smuggling of migrants and which are not? Why?
- What does the Protocol say about the culpability of the smuggled migrant?

C. Key differences between smuggling of migrants and trafficking in persons

For investigators or prosecutors, it is important to distinguish between trafficking in persons and smuggling of migrants and related conduct for three reasons.

- The constituent elements of the respective offences are different.
- The response required of the authorities will vary depending on the offence.
- Being recognized as a smuggled migrant or a victim of trafficking has serious implications for the person concerned.

UNODC has also produced an anti-human trafficking manual for criminal justice practitioners. For more information contact ahtmsu@unodc.org.

What is trafficking in persons?

Constituent elements

Article 3, subparagraph (a), of the Trafficking in Persons Protocol defines trafficking in persons as follows:

... 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.

In basic terms, for a person to be guilty of trafficking in persons, the following must be present (and substantiated).

- Act: recruiting, transporting, transferring, harbouring or receiving a person.
- Means: use of force; or threat of force; or coercion; or abduction; or fraud; or deception; or abuse of power; or abuse of a position of vulnerability; or giving or receiving of benefits.
- Purpose: exploitation.

Using a combination of these three constituent elements, the Protocol defines the crime of trafficking in persons as outlined in figure I.

Figure I. Trafficking in persons: matrix of the elements of the offence

Recruitment		Threat or use of force		Exploitation of the prostitution of others	
Transportation		Other forms of coercion		Sexual exploitation	
Transfer		Abduction		Labour exploitation	
Harbouring		Fraud		Slavery or other slavery-like situations	
Receipt of persons	+	Deception	+	Organ removal	
		Abuse of power			
		Abuse of a position of vulnerability			
		Giving or receiving of payments or benefits to achieve the consent of a person having control over another person		Etc.	
					= Trafficking in persons

The issue of consent

Article 3, subparagraphs (b), (c) and (d), of the Trafficking in Persons Protocol states that the consent of a victim of trafficking in persons to the intended exploitation is irrelevant once it is demonstrated that deception, coercion, force or other prohibited means have been used. Consent, therefore, cannot be used as a defence to absolve a person from criminal responsibility. In cases involving trafficking in children, the Trafficking in Persons Protocol states that it is sufficient to prove the action and the purpose.

Both instances reflect the simple fact that no person can consent to being exploited, because in the case of adults, consent has been negated through the use of improper means and, in the case of children, their vulnerable position makes it impossible for them to provide consent in the first place.

Article 3, subparagraphs (b), (c) and (d), of the Trafficking in Persons Protocol

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.

A case of trafficking in persons is illustrated below.



Case study

Trafficking in persons

In 2006, the department for organized crime of an EU member State in Central Europe conducted an investigation into trafficking in its citizens with the aim of exploiting them at tomato plantations located in the vicinity of a town in an EU member State in Southern Europe.

On the basis of the evidence gathered, it was concluded that the perpetrators placed advertisements in national newspapers offering work picking tomatoes in the Southern European country. Persons providing information on working conditions and departure dates over the phone introduced themselves using false personal data. Phone numbers featured in job offers were changed frequently. The charge for the journey to the destination country was from €95 to €190; workers were additionally charged about €150 upon arrival. Transport was provided by private companies of the Central European country as well as by individual carriers.

Recruited workers were transported directly to plantations. Workers were enslaved in the holdings, and subjected to physical and psychological violence. In order to prevent them from contacting anyone from outside, they were supervised by guards during the working day, and at night they were locked in the premises where they slept; frequently, their mobile phones and documents were taken away.

One of the methods of forcing the recruited persons to work was charging them with excessive costs for accommodation, electricity and other costs (e.g. for the possibility to go shopping) during the first few weeks of their stay abroad. The costs charged were so high and earnings so low that the persons did not manage to cover the alleged debt, even after a few months. The work was organized in such a way that it was impossible to meet the conditions of picking a certain amount of tomatoes within a certain time. If the victim failed to meet those conditions, the exploiter charged him or her a fine and thus the indebtedness of the victim kept increasing. The victims were accommodated in premises completely unfit for humans, mainly in ruined buildings with no water, electricity or furnishings; in many cases victims were forced to live in tents. The “guards” carried guns and were extremely brutal.

At present, the status of “trafficking victim” has been granted to 285 persons. Decisions on filing charges have been issued in respect of 28 persons.

What are the main differences between trafficking in persons and smuggling of migrants?

In a significant number of cases it may be difficult to distinguish a case of trafficking in persons from one of smuggling of migrants and related conduct. The scenario may be so similar that an investigator or prosecutor may be tempted to treat them in the same way. However, the consequences of treating a trafficking case as one of smuggling of migrants can be severe for the victim. Also, the applicable punishment for a person convicted of trafficking in persons, not “just” of smuggling of migrants, is more severe in most cases.

The distinctions between smuggling and trafficking are often very subtle and sometimes overlap. Identifying whether a case is one of trafficking in persons or smuggling of migrants can be very difficult for a number of reasons.

- Some trafficked persons might start their journey by agreeing to be smuggled into a country illegally but find themselves deceived, coerced or forced into an exploitative situation later in the process (e.g. being forced to work for extraordinarily low wages to pay for the transportation to that country).
- Traffickers may present an “opportunity” that sounds more like smuggling to potential victims. They could be asked to pay a fee in common with other people who are smuggled. However, the intention of the trafficker from the outset is to exploit the victim. The “fee” was part of the fraud and deception and a way to make a bit more money.
- Smuggling may be the planned intention at the outset but a “too good to miss” opportunity to traffic people presents itself to the smugglers or traffickers at some point in the process.
- Criminals may both smuggle and traffic people, employing the same routes and methods of transporting them.

Thus, it should also be borne in mind that what may begin as an investigation of the smuggling of migrants could develop into an investigation of trafficking in persons once the full facts are established. The key here is to investigate the conduct and circumstances to see what, if any, offences have been committed and to deal with the people involved (be they suspects, witnesses or victims) appropriately.

To appreciate the proper investigative approach to the two offences, investigators and prosecutors must understand the basic differences.

There are three basic differences between smuggling of migrants and trafficking in persons as summarized below:

1. *Exploitation*

One important indicator of whether a case is one of smuggling of migrants and related conduct or of trafficking in persons is how the offenders generate their income. The primary source of profit and thus also the primary purpose of trafficking in persons is exploitation. In contrast, the smuggler has no intention of exploiting the smuggled migrant after having enabled him or her to illegally enter or stay in a country. The smugglers of migrants are usually paid in advance or on the arrival of the smuggled migrant by the smuggled migrant or intermediaries.² In other words, the relationship between smuggler and smuggled migrant usually ends after the procurement of the illegal entry or illegal residence. In contrast, in trafficking in persons, profits are mainly generated through exploitation. The exploitation phase might last for several years.

2. *Illegal entry or illegal residence*

The smuggling of migrants always has a transnational dimension involving at least two countries. The objective of the smuggling of migrants and related conduct is always to facilitate the illegal entry or stay of a person from country A in(to) country B. Trafficking in persons may also involve the illegal entry or stay of a person, but it does not always. The transportation and stay of a victim of trafficking in persons can also occur in a legal way. Moreover, trafficking in persons often occurs within the home country of the victim without involving any border crossings.

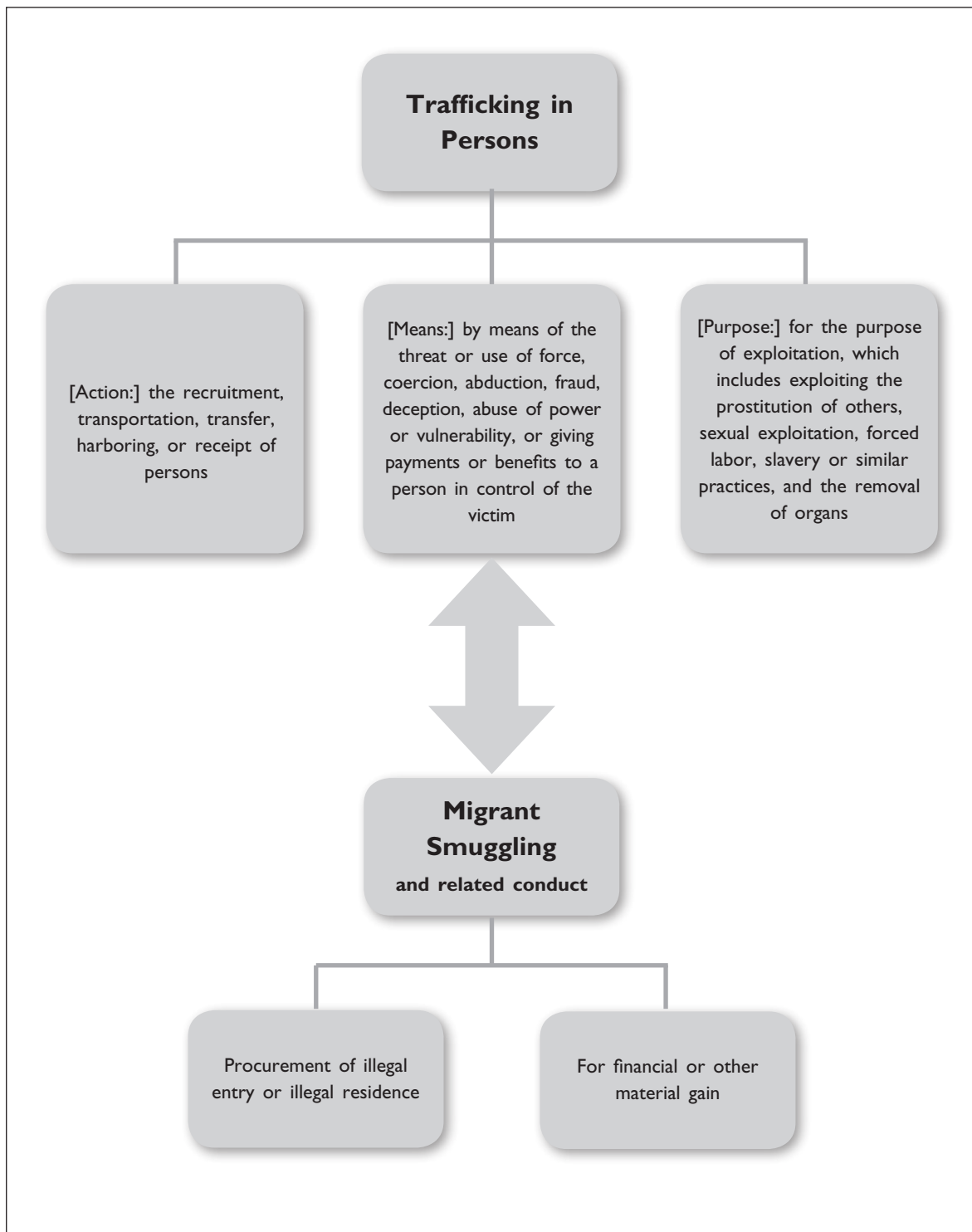
3. *Victim*

The smuggling of migrants does not necessarily involve the victimization of the smuggled migrant. The smuggling of migrants generally involves the consent of those being smuggled. However, often other crimes are committed against smuggled migrants during the smuggling process such as violence or crimes endangering the smuggled migrants' lives. There is also the possibility that the smuggled migrants might retract their consent during a smuggling operation (e.g. if they deem the conditions of transportation too dangerous) and might subsequently be forced to continue with the smuggling operation (e.g. a smuggled migrant who is physically forced to enter a vessel).

²It must also be noted that sometimes smuggled migrants have not paid the entire smuggling fee at the outset; this pending payment renders them vulnerable to exploitation by the smugglers. See Module 4 for more information about modes of payment.

In contrast to the smuggling of migrants, trafficking in persons is always a crime against a person. Victims of trafficking have either never consented (e.g. if they have been abducted or sold), or, if they have given an initial consent, their initial consent has become meaningless through the means the traffickers have used to gain control over the victim, such as deception or violence.

Figure II. Trafficking in persons and smuggling of migrants



The following case study illustrates a case of trafficking in persons that from the victim's perspective started as migration.



Case study

Nok

Nok is a 20-year-old woman from South-East Asia. She is widowed and supports her two small children by selling vegetables. One day, her friend Patnaree approaches her. Patnaree says she can find Nok a job as a domestic worker in another South-East Asian country where she can make 10 times her current monthly earnings. Patnaree also promises to make all her travel arrangements and to pay for her trip if Nok agrees to repay her once she starts her new job in the destination country.

Deciding that the extra income will benefit her family, Nok leaves her children in the care of her mother and begins her journey by bus in the company of Patnaree. Nok has no passport, but Patnaree assures her that she will not need one since she has friends at the border. Some miles before the border, they leave the bus and wait at a roadside cafe until they are joined by a truck driver called Than. Nok is surprised to see Patnaree pay to Than a significant sum of money before they both get into the truck with him and continue their journey to the border. They cross the border without any problems, as Patnaree promised. It is the only time Nok knowingly crosses a border on her trip to the destination country. The truck driver Than is friendly, but asks Nok to sit in the truck's closed rear compartment so as to avoid problems at the next border. It is dark, hot, and very uncomfortable in the back of the truck, but Nok agrees since she has no passport and can only rely on his advice and goodwill and Patnaree's friendship. It is a long trip, and Nok's journey in the rear compartment of the truck comes to an end in an empty field beside a wide river where Patnaree and the driver Than meet four men who are citizens of the destination country.

The four men then take Nok across the river. Nok is told that she is now in the destination country. She is ordered to get in the back of a truck that is waiting at the side of the river. In the back of the truck are seven other women. Nok is afraid, no longer believing that she is to be given the job she was promised. When she refuses to get into the vehicle one of the men threatens her with a gun. The four men travel together in the cab of the vehicle.

Nok and the other women are taken to a private house in a major city. Over a period of several weeks, the four men repeatedly physically and sexually abuse the women. They do not allow them to leave the premises. One man tells Nok that if she escapes, the police will put her in prison for being in the country without a passport and that she will never see her children again. He also threatens to locate and traffic her children if she even tries to escape. Other men visit the house, and Nok is forced to have sex with them, for which her four captors receive payment. She is not allowed to retain any of the money and is not allowed to leave the building.



Questions and exercises

- Why is the case study on trafficking in persons considered to be one of trafficking in persons? Why is this not a case of the smuggling of migrants?
- With regard to the case study on Nok, is Nok a smuggled migrant or a victim of trafficking?
- Susan consents to getting into the vehicle with John, who has promised to take her illegally over the border into Anyland. Because Susan gives her consent, the investigating officer on this case concludes that Susan is not a victim of trafficking.

You are supervising this case and must advise the investigating officer.

Is the conclusion of your investigating officer correct?

Explain why or why not to your investigating officer.

D. Categories of smuggling of migrants



Case study

Morgan

“My name is Morgan, I’m 30 years old. I was born in a West African country. I tried to get to the islands of a Western European country once before but didn’t make it. I’m on my way back to try a second time. The boat I was on was intercepted by the country’s police as we reached land. I was put in detention and then deported back to my country of origin. That journey was quite possibly the most frightening experience of my life and had we not been picked up by the authorities, we would all have died. Despite this, I am on my way back, to try again, a second time.

“Life in my home is hard. There is such poverty. There are no jobs, there’s no food and there is corruption. I can’t say too much about the situation as I fear for the lives of my family, the ones I’ve left behind. My father died when I was young, life has been difficult for my family ever since. I don’t remember a time when we didn’t struggle to eat. I have to try and make a better life for myself and it will enable me to send money back for my family.

“I left my home on 11 January 1998 and began my journey. I travelled overland through several countries to North Africa. I worked wherever I could, selling goods and working as a barber. I was caught by police on various occasions.

“Upon arriving in North Africa, a friend of mine told me we should go to the western side of a country in North Africa where we could meet someone who would help us get to the islands of this Western European country. I gave a man €300. He took me out into the open desert where there were more than 70 other Africans waiting to go.

“We entered the boat on 7 August 2002. There were three boats, each boat carried around 25 people. As the boat moved off, we began singing gospel music to keep our spirits up. It helped us not to think about the danger. After many hours, lots of us, including myself, were vomiting. One girl who had been seriously vomiting died. I can’t say what happened to her body. I try never to think about it. I’m also afraid for my safety.

“After many hours of this, a big wave came and covered the boat. Everyone was shouting, water was pouring into the boat. I thought we were dead. We were all crying. We had no idea which direction we were going in or which direction we had come from. Everyone was panicking but then the engine suddenly started again. We all worked hard to bail out the water and we continued the journey. We were at sea for another 3 or 4 hours. I remember thinking it felt like the ocean kept opening up, swallowing our boat and spitting it back out again.

“We were rescued by the police as we neared the coastline. Moments after they picked us all up, our boat broke in two. If we had not been rescued, we would certainly have died at sea. The other two boats disappeared. To this day I don’t know what happened to them. I was in detention on the island for many days but we heard nothing.

“Back in my home country, the situation was even worse. I started trying to save money again. I met a friend who had some money and we agreed to try and make the journey again. We travelled through many countries before arriving in a West African country that borders North Africa. There we paid a truck driver to take us to a North African country but he dropped us in the middle of the desert in that country. We were left there for two days with no water. Some people died, including my friend and travel companion, John. Luckily for us, the authorities rescued us again. It was the country’s police this time, they found us in the desert and sent us back to the other country. That saved my life.

“I gathered together as much money as I could and started out again. I’m back on the road now, working where possible and trying to save enough money to take the boat again. I am, of course, very afraid of making this boat journey again but there is no other way. I and other Africans like myself feel we have no choice. I have to try and make a better life. I pray God will see me through.”

The smuggling of migrants can take many forms.

Organizing the smuggling of migrants might range from pre-planned, highly sophisticated smuggling operations involving different methods (such as first travelling openly with falsified documents, then being guided over a green border on foot and finally driven hidden in a lorry over a border) to simple smuggling services (such as guiding a migrant over the green border) that were negotiated on an ad hoc basis between the migrant “on the move” and the smuggler (e.g. in a border town).

Similarly, the number of actors involved (that is, criminals involved in a smuggling operation) can vary considerably. Also their relationship to each other can take various forms.

Too often, it is assumed that the smuggling of migrants is a business dominated by hierarchically organized criminal groups who utilize existing smuggling routes (for example, those used for drug trafficking) and adapt various *modi operandi* to deal with a different commodity — migrants. This might be true in certain countries and regions, but there are also large numbers of smaller, flexible criminal groups or individual criminals that interact when necessary. Although these groups may form networks, these networks should not be confused with a unified organization characterized by a “mafia”-style hierarchy.

Smuggling of migrants can be organized in many different ways and having a basic understanding of the main categories of the smuggling of migrants and related conduct will help in gathering intelligence or investigating or prosecuting such offences.

While there are many possible ways to categorize the smuggling of migrants, the following typology has been chosen since it places particular emphasis on the organizational aspects of the smuggling of migrants and related conduct. Like all models, this typology constitutes a generalized depiction of reality. Thus, while this typology can serve as a starting point to help in understanding the smuggling of migrants and related conduct, no attempt should be made to squeeze reality into such a model. As mentioned earlier, the smuggling of migrants can take many forms.

The typology below is modified and simplified, based on research by Matthias Neske. He interviewed experts and examined copies of 51 complete court proceedings from all over Germany. The court proceedings provide information on several hundreds of smugglers of human beings and approximately 20,000 smuggled persons. Based on his research, Neske developed three model types of migrant smuggling and related conduct.

For more details, see Matthias Neske, “Human smuggling to and through Germany” in *International Migration*, vol. 44, No. 4 (October 2006).

Type I: Ad hoc smuggling services

The key characteristics of ad hoc smuggling services are:

- Migrants organize their journey themselves with the occasional use of local smugglers; the smuggling process is not pre-organized. That is:

A migrant travels on his or her own, mostly legally and by public transport.

However, not being in possession of the necessary documents to enter the country of destination (or transit) legally, the migrant resorts from time to time (at least once — if not there is no smuggling of migrants) to the assistance of smugglers of migrants to facilitate his or her illegal entry during the journey.

- The migrant usually does not have sufficient financial or logistical options for being smuggled in other ways. It is rare that families rely on this way of being smuggled.



Case study

Gheorghe

Gheorghe is 35 years old and lives in the capital of an Eastern European country. He has been without a job for several years. He has already gone to Western Europe looking for a job three times. Twice he was apprehended when crossing a border and sent back. Another time he managed to enter the envisaged destination country in Western Europe irregularly and worked there for one and a half years. Then he returned to his country.

In 2000, since his savings from his time in the Western European country were running out, he decided to leave his country again. He obtained a visa for the neighbouring country and travelled to its capital by bus. From there, he travelled by bus to the border with a Central European country, which he crossed on foot without any assistance.

Gheorghe could not find any work in that country and decided to go to another country in Western Europe. Fearing that it was too dangerous to attempt to enter the neighbouring country illegally on his own, Gheorghe decided to enlist the services of a smuggler. After a few days of searching, he met a fellow citizen who assured him that he knew the border area very well. He paid a fee of approximately \$150 to the smuggler. The smuggler drove him close to the border and guided him over the border on foot. Immediately after crossing the border, he was apprehended by a border police patrol while the smuggler managed to escape.

During the debriefing, Gheorghe indicated that he did not have a fixed plan; he might have wanted to stay in that country or continue to another Western European country.

Type 2: The smuggling of migrants and related conduct

A key example of the smuggling of migrants facilitated by the use of fraudulent documents is the misuse of visas to facilitate illegal entry or stay:

- Visas are obtained on fraudulent grounds; that is, the reasons put forward to obtain the visa are not true.
- After having received their visas, the migrants conduct the whole journey between their countries of origin and destination, often without any presence of human smugglers.
- For people who have been issued with an individual visa (for example, a business visa), the border controls can be passed easily. In the case of group visas (tourists) where the so-called tourist group neither knows each other nor travels together, problems could occur when checks are made (in the cases examined by Neske, it was only in this way that cases of obtaining visas by artifice were discovered at all).
- The smuggled migrants usually do not have any personal relationship with the smugglers.
- In extreme cases, only two “smugglers” are able to organize the whole smuggling process.
- Migrants or those who commission the smuggling have sufficient financial resources; fees are usually paid in advance.



Case study

Two men cooperate in facilitating the issuing of fraudulent visas

A businessman from a Western European EU country, Mr. M, organized tourist travel to his country. Another businessman from a country in Southern Africa, Mr. D, lived in the capital of an Eastern European country. Both Mr. M and Mr. D had known each other for several years. At the end of the 1990s, they decided to cooperate in facilitating the issuing of visas on fraudulent grounds to citizens of that Eastern European country.

Through newspaper advertisements, Mr. D identified clients wanting to migrate to a Western European EU country. He provided their names and birth dates to Mr. M, who then prepared invitations and agendas for alleged “business trips” to his country. He also completed the formalities that were part of the visa application in his country. Mr. M also made a three-day reservation in a cheap hotel in a city in his country for each of the travellers. Once the arrangements were made, Mr. M sent all the documents including the hotel reservation, the invitation and the agenda for the business trip to Mr. D who submitted them to the embassy of Mr. M’s country. Mr. D then provided the travellers with their respective visas, and they then travelled on their own across Mr. M’s country to their respective countries of destination in the European Union.

It is estimated that Mr. M and Mr. D facilitated the illegal residence of 6,000 citizens of that Eastern European country. The estimated fees for arranging a visa were up to \$2,000 per person. Mr. M was sentenced to seven years and six months of imprisonment.

There are also other forms of facilitating illegal residence such as sham marriages which is another commonly used technique.



Case study

Sham marriage scam, from South Asia to Western Europe, 2006

A man who had arranged over 80 sham marriages was jailed for five years following an investigation in a Western European country.

Mr. S, who had been the main organizer of the scam, was recommended for deportation after serving his sentence.

The scam involved bogus marriages between men mainly from South Asia who wanted to stay in the Western European country and brides who appeared to be citizens of that country.

Mr. S supplied the brides and submitted false supporting documents to the relevant authorities requesting that the grooms be allowed to remain in the country.

The scam came to light in July 2004 when an investigative journalist received information that someone was using the name of a reputable firm of solicitors to carry out an immigration scam. The reporter then posed as an immigrant looking to stay in the country and met up with Mr. S. During the meeting, Mr. S offered to arrange a marriage, saying he would organize the necessary documentation in a service he called “everything under one roof” for €8,500.

Mr. S was arrested in September 2004 with his then girlfriend Ms. P, who was also involved in the scam.

During searches of Mr. S’s addresses, police found blank Islamic marriage certificates and documents, including passports in the names of his three alias.

A number of the “brides” and “grooms” were arrested and prosecuted for their involvement in the scam:

- Ms. P pleaded guilty to three charges of knowingly making a false declaration for the purposes of obtaining a certificate of marriage. She was sentenced to 140 hours community service and fined €750.
- Mr. J pleaded guilty to perjury and received a nine-month prison sentence.
- Ms. D pleaded guilty to five counts of perjury and was sentenced to two years’ imprisonment.
- Ms. G pleaded guilty to her involvement in a fake marriage including one charge of perjury. She received and served a four-month prison sentence.
- Mr. K pleaded guilty to his involvement in the marriage to Ms. G. He provided police with the fake supporting documents, including a fake death certificate supplied by Mr. S for his real wife, who was still alive and living with him. He was sentenced to nine months’ imprisonment.

The fraudulent use of documents for the purpose of migrant smuggling may involve:

- Fake passport.
- Lookalike photo in passport: the bearer or holder of an original passport is not the owner of the passport but bears a resemblance to the person in the photo therein (commonly referred to as a lookalike or imposter passport).
- Original passport with a visa that has been obtained fraudulently.
- Original passport obtained fraudulently.
- Blank stolen passport filled in with the irregular migrant’s data.
- Falsified passport: the photo and/or data on the ID page has been changed.
- No passport — lost or thrown away prior to making a claim for asylum.

For more information refer to the UNODC specialized training module on document fraud. Contact the UNODC Anti-Human Trafficking and Migrant Smuggling Unit at ahtmsu@unodc.org.



Case study

Gang jailed for running passport factory, 19 January 2009

A gang of fraudulent passport makers were sentenced to a total of 12 years and 2 months for running one of the most sophisticated and organized document factories seen in recent years. All five defendants will also be subject to deportation orders.

The gang had been running a passport factory from their residential address in a European Union (EU) member State, making identity documents, driving licences and national insurance cards of other EU member States. The document factory contained high-tech card printing and hot foil equipment. It was very well organized, with three separate workstations replicating the various stages of manufacture. Between two bench vices, detectives found dry embossing stamps bearing official passport crests ready to be placed on the front covers of the counterfeit passports.

A thorough search of the premises revealed two safes containing numerous documents, and on open display were over of 300 blank passports and 400 blank identity documents of four other EU member States. There was evidence that numerous false documents, including utility bills, had been made and sold and orders were being prepared with numerous passport photographs lying in wait. The group was believed to be manufacturing identities of EU member States to enable non-EU citizens to remain in their country and to gain employment.

Type 3: pre-organized stage-to-stage smuggling

The key characteristics of pre-organized stage-to-stage smuggling are:

- The smuggling process is pre-organized, meaning that the migrants themselves do not have to conduct negotiations with local smugglers during their journey. “Stage coordinators”, a chain of independent individuals who however interact closely, carry out the negotiations with the “local service providers” and pay them. “Local service providers” are most often nationals or residents of the transit country and change from stage to stage.
- The stage coordinators and smuggled migrants usually have the same ethnic background.
- Each stage coordinator outsources the actual smuggling activities to either a “local coordinator” (who in turn outsources the actual smuggling to the “local service providers”) or directly to the “local service providers”.
- Migrants conduct most parts of the journey accompanied by smugglers.
- Rarely does one individual mastermind the whole process from origin to destination.

- The relationship between coordinators and service providers is characterized by the following aspects:

The local service providers' "wrong" ethnic background and the lack of contacts may make it difficult for them to become coordinators themselves.

The service providers and coordinators are not part of one organization; they are rather part of a process which works on the principles of the market and is driven by profit. After the coordinators and the service providers have cooperated successfully over a long period of time, they could be considered to be part of a network through a process similar to the establishment of a circle of regular customers.

In the cases examined by Neske, threats, if they are made at all, almost always refer to not being asked to take part in the next smuggling operation.

- In cases of pre-organized smuggling from non-crisis regions, single male and female migrants prevail. Neske identified two sub-types:

Migrants being smuggled in order to allow them to join family or community members already established in the destination country. Those being smuggled are usually expected in the target country. The smuggling operation is mostly commissioned from the target country.

Migrants who are sent by their community without having existing contacts in the destination country (e.g. migrants from certain Chinese provinces). Usually a family or village community suffering from poor living conditions commissions the smuggling operation. The smuggling fees are often advanced by the smugglers, making the smuggled migrants particularly vulnerable to trafficking in persons and exploitation in the destination countries.



Where fees are advanced by smugglers, this could be an indicator of trafficking in persons.

In cases of pre-organized smuggling processes from crisis regions (see the case study on smuggling of asylum seekers below), the smuggled migrants usually rely on existing international contacts and on sufficient financial resources. Such cases include most of the cases examined by Neske in which either a whole family or parts of a family were on the move. Countries of origin are usually those which are experiencing crises by virtue of conflict. Destination countries are usually those where the migrants have a good chance of being granted asylum. In this respect it is important to note that many of those smuggled by this method are refugees; the right to apply for asylum is upheld regardless of the means by which the person gained entry into a country.



It is not the role of the law enforcer to determine whether an asylum claim is valid or false. It is the law enforcer's role to know how to appropriately initiate the process of having such claims determined in their country.

For more on asylum claims see module 9.



Case study

Rajat

Rajat is from a South Asian country and has lived in the capital of a Central European country for many years. He speaks the language of his country of residence fluently. He deals with the import and export of textiles.

He is also a typical “stage coordinator”. That is, he is responsible for receiving migrants smuggled from his home country, arranging housing and preparing for their onward travel to their next destinations (usually in a Western European country).

In his function, he interacts with other “stage coordinators”, who are all from his home country, and with “local service providers”. Local service providers are most often nationals or residents of the countries en route and do the actual smuggling work such as driving or guiding the migrants over the border. Whenever one stage is successfully passed, the migrants call the responsible stage coordinator to inform them of this. The “stage coordinator” then pays the “local service providers”.

Rajat is also in contact with the “stage coordinator” in his South Asian home country who coordinates the departure of the migrants. That coordinator, together with the other “stage coordinators” involved, determines the route and the fee to the targeted destination country. In the cases in which Rajat is involved, the fees were estimated to be between \$2,000 and \$5,000.

In a typical case in which Rajat was involved, the smuggled migrants flew from the South Asian country to the capital of an Eastern European country using falsified passports. A “stage coordinator” took the passports on their arrival and sent them back to a South Asian country. He also arranged for the migrants’ to travel to the capital of another Eastern European country while hidden in a truck. In that city, another “stage coordinator” arranged for them to travel to the capital of a Central European country. There, another “stage coordinator” arranged for the migrants to travel to Rajat’s city of residence, while hidden in a van. Then Rajat organized the next stage of travel to a neighbouring Western European country by outsourcing the actual smuggling activity to a citizen of Rajat’s country of residence, Jozef. Jozef drove the migrants close to the border, where they were handed over to an associate of Jozef’s, who guided them over the border on foot. Once they crossed the border, the migrants were picked up and brought in a small van to a big city where the next stage coordinator, Harun (a friend and relative of Rajat), lived. From there, the migrants called Rajat, informing him of their arrival. Harun then contacted Jose, the “stage coordinator” of the Western European country of destination. Harun again outsourced the actual smuggling to local smugglers, who drove them in cars to the destination country, sometimes hiding them behind the rear seats when crossing the borders of other Western European countries. Jose received the smuggled migrants. Most of the migrants had relatives in the destination country who collected them from Jose. It was proved that most of those relatives had commissioned the smuggling.



Case study

Smuggling of asylum seekers

The case described below was reconstructed mostly on the basis of telephone interceptions made in 2001. The smuggling fee was estimated to have been between \$2,000 and \$5,000 per person.

Fellow citizens already living in the destination country in Western Europe commissioned the smuggling of their relatives from a country in the Middle East. To do that, they contacted Ahmed (a fellow citizen living legally in a city in the destination country), who they knew through mutual acquaintances. The migrants started their journey with local smugglers, who guided them over the border into the neighbouring country. The subsequent bus journey to the capital of the country was conducted with the assistance of a locally recruited smuggler. Ali, another fellow citizen who legally resided in both the destination country and the transit country, received the migrants in the capital of that transit country. He arranged for food and accommodation and organized the next stage. Ahmed and Ali were either brothers or very good friends. Little is known about that next stage, travelling to another capital in a Southern European country, other than that it was outsourced to other coordinators. The smuggled migrants arrived by boat in that Southern European country. During that stage, Ali maintained constant telephone contact with the other coordinators. In that Southern European country, the migrants were received by Oemer and declared themselves to the authorities and were asked to leave the country within two weeks. During that time, they could move freely. Oemer assisted in arranging the accommodation and buying the tickets. The smuggled migrants took a train to the northern part of that country. Oemer informed Ahmed, who picked them up and drove them, hidden in a car, to the destination country in Western Europe, where they were handed over to their relatives. There, the migrants applied for asylum. During the whole smuggling process, Ali remained in constant contact with those who had commissioned the smuggling and those who were involved in smuggling.



When investigating migrant smuggling cases, always bear in mind the saving clause of the Smuggling of Migrants Protocol (article 19), and the principle of non-refoulement. For more on non-refoulement, see modules 7 and 9.



Questions and exercises

- Describe the most common modus operandi used by smugglers of migrants that you have come across in your country.
- In your own words, explain what smuggling of migrants on an ad hoc basis means. Describe situations you have come across in your country involving this type of smuggling of migrants.
- In your own words, what is meant by “the smuggling of migrants facilitated by the use of fraudulent documents”? Describe situations you have come across in your country involving this type of smuggling of migrants.
- In your own words, explain what is meant by “pre-organized stage-to-stage smuggling”. Describe situations you have come across in your country involving this type of smuggling of migrants.
- Make up an example of the smuggling of migrants involving one of the typologies discussed:
 - Smuggling services arranged on an ad hoc basis during the journey;
 - Facilitating illegal residence through visas obtained on fraudulent grounds;
 - Pre-organized stage-to-stage smuggling.
- In an earlier exercise, you described the most common modus operandi in the smuggling of migrants that you have come across in your country. Does one of the three typologies presented describe this modus operandi?
- In the case study on sham marriages, would Ms. G be considered a smuggler of migrants according to the Smuggling of Migrants Protocol? Would your answer be any different if she had received no remuneration for her involvement?
- In the case study on the gang jailed for running a passport factory, would the defendants be considered smugglers of migrants according to the Smuggling of Migrants Protocol?
- Have you come across any passport factories in your country? If so, what crimes did those responsible breach according to the legislation of your country?

E. Actors and their roles in the smuggling process

There may be a range of different actors performing a range of different roles in the smuggling process, e.g. small-scale smugglers would not generally employ other actors in the process but would arrange all aspects of the operation themselves. Within larger smuggling networks, there will be a division of work among the actors involved. Often those individuals who organize or coordinate a smuggling operation are the most difficult to gain evidence against, but unless they are brought to justice, the smuggling of migrants will continue.

There are several actors who may be involved in the smuggling of migrants. They are known by different names in different regions. Some functions that they could perform are outlined below.

Coordinator or organizer

The coordinator or organizer is the person with overall responsibility for the smuggling operation, acting like a manager of an enterprise. He or she might direct, employ or subcontract other individuals participating in a particular operation. The organizer oversees the whole process within his or her area of responsibility and can arrange for a change of personnel, routes, modes of transport and accommodation. The organizer has many contacts.

A full smuggling operation might be organized by one organizer. Or it might also be organized by a chain of organizers, who interact on an equal footing with each other, each covering and organizing a certain part of the migrant's journey, like managers of different companies cooperating with each other.

Traditionally, it has been extremely difficult to gather sufficient evidence against the organizers. The organizers often have "employees" who actively engage in the criminal activities, and those people will only report to the organizers when required. However, unless those involved further down stream in the organization are arrested, it will not be possible to bring to justice the organizers of the smuggling network or group.

Recruiters

Recruiters advertise their services and establish contacts between smugglers and migrants wishing to make use of smuggling services. Often, recruiters may not be affiliated with one particular smuggler. They often live permanently in the country of origin or transit and have a good knowledge of the language of the migrants, and may even know them personally. Recruiters prey on vulnerable persons and exploit their vulnerability. They will often tempt people into migrating, often misinforming them about both the process and the reality of the destination country. Recruiters may also collect the initial fees for transportation and use the services of persons who do not directly recruit persons to be smuggled, but will provide the recruiters with information about where such persons could be found.

Transporters or guides

Transporters or guides manage the operational part of smuggling by guiding and accompanying migrants en route through one or more countries and overseeing border crossings. Migrants may be handed over from one guide to another at different stages of a journey. Often, guides are men from border regions with local knowledge.

Because guides are often easy to recruit, their separation from the network does not necessarily represent a serious interruption of the smuggling process. At the same time, they play a crucial role in the success of an individual migrant's crossing of the border and are in a position that allows them to exploit or mistreat the people they are guiding. Often, it is the role played by the guide that will impact most on the smugglers' reputation.

In some contexts, guides may be unaffiliated with larger smuggling networks and may provide services only on a contract basis or may otherwise loiter around international border areas (bridges, bus stations etc.) touting for work.

When caught with a group of migrants, guides will often seek to pass themselves off as a member of the group. It is important to watch how the members of a group of migrants behave with each other. Is one in control or attempting to influence what others do or say? Does one member of the group appear to be dressed differently or in more expensive clothes? Often, these clues will help identify a guide who is attempting to pose as a migrant.

Spotters, drivers, messengers, enforcers

Spotters, drivers and messengers are individuals who perform other jobs in the smuggling process. Spotters, for instance, may have the responsibility for providing specific information about checks by the police, border guards and the army. Spotters, who often travel some distance ahead of the vehicle carrying the smuggled migrants, warn by mobile phone of possible checks.

Enforcers are responsible for protecting the smuggling business. This may involve using threats or actual violence against the migrants who are being smuggled in order to keep them under control during an operation (which could involve numerous migrants aboard a vessel) or to make them pay smuggling fees that are still owed.

“Service providers” and suppliers

Ad hoc “service providers” and suppliers are individuals who often maintain a relationship with the smugglers and are paid a share of the profits for their role in the smuggling process. As they often deal with more than one smuggling network or group, they will provide their services to whoever is willing to pay for them. They may be used frequently or sporadically, depending on the services offered and what is actually required. For instance, boat owners or boat makers may allow their boats to be used for the purpose of smuggling migrants.

When corrupt, public officials such as border police, soldiers, immigration officials, employees in embassies and consulates, port police and other actors are paid a bribe to turn a blind eye or otherwise facilitate the smuggling process.

Throughout the smuggling process, there are also people who harbour smuggled migrants and smugglers of migrants. These include hotel, house or apartment owners (or residents) who are responsible for providing accommodation to migrants en route. Hotel owners are particularly useful when groups of migrants need to be gathered together before being moved onward.

Service providers also include other individuals who are willing, for a price, to play a role in facilitating the process, such as:

- Forgers of passports, visas and other travel and immigration documentation.
- Document counterfeiters.
- Train conductors.
- Taxi drivers.
- Airline staff.
- Boat owners or owners of other vehicles.
- People responsible for upkeep of vehicles (for instance, rubber dinghies) and fuel supply.

- Financiers and cashiers who are responsible for handing over the migrants' money to the smuggler(s) on successful completion of the smuggling operation; cashiers may also be involved in a legitimate business (e.g. shop owners).

It should also be noted that there may be some individuals who facilitate the smuggling process without being aware that they are doing so because they receive no payment for their participation (for instance, the taxi driver who unknowingly transports smuggled migrants for a normal fee). Other individuals may be aware of the indirect benefit they receive for playing a passive role in the process, while turning a blind eye (for instance, the taxi driver who receives a normal fee but is aware that he is transporting a smuggled migrant to a safe house, and thinks that it is not his business to interfere).



Questions and exercises

- Write a short case study based on your experience, describing the modus operandi of an operation to smuggle migrants.
- What individuals other than those mentioned above may also act as service providers and suppliers?

F. Concluding remarks

There are three basic components of the offence of smuggling of migrants:

- Procurement of illegal entry or illegal residence for a person.
- Into or in a country of which that person is not a national or permanent resident.
- For financial or other material gain.

Awareness of the constituent elements of the smuggling of migrants is a prerequisite for successfully identifying, investigating and prosecuting the crime.

The smuggling of migrants can take many different forms, ranging from pre-planned, highly sophisticated smuggling operations involving different methods to simple smuggling services negotiated on an ad hoc basis between the smuggler and the migrant. Similarly, the number of actors involved and the nature of their relationship to each other can vary considerably.

The typology outlined serves to depict the various degrees of organization and sophistication of an operation to smuggle migrants. While there are many possible ways to categorize the smuggling of migrants, this typology has been chosen because it places particular emphasis on the organizational aspects of the smuggling of migrants. Like all models, this typology constitutes a generalized depiction of reality and should serve only as a starting point for understanding the smuggling of migrants. When investigating or prosecuting an actual case, it must always be kept in mind that only the facts count. An actual case might involve a mixture of elements derived from all three types presented or might be completely unrepresentative of the typology presented.

Another important feature of the smuggling of migrants process is the constant change of routes and methods by smugglers in response to such factors as new migration regulations, changes in visa regimes and more efficient border control measures.

Being aware that the smuggling of migrants takes many forms and has many variations is an important weapon in the investigator's armoury.

At the same time, it is of the utmost importance to appreciate the difference between trafficking in persons and the smuggling of migrants. Although the crimes will sometimes overlap or have similar consequences (e.g., smuggled migrants might be severely traumatized by the conditions under which they travelled or were forced to travel), trafficking in persons and the smuggling of migrants are distinct crimes.



Self-assessment questions

- What are the basic elements that constitute the smuggling of migrants?
- What forms can the smuggling of migrants take?
- What are the main differences between the smuggling of migrants and trafficking in persons?
- What are the roles of the different criminal actors in migrant smuggling operations?



UNODC

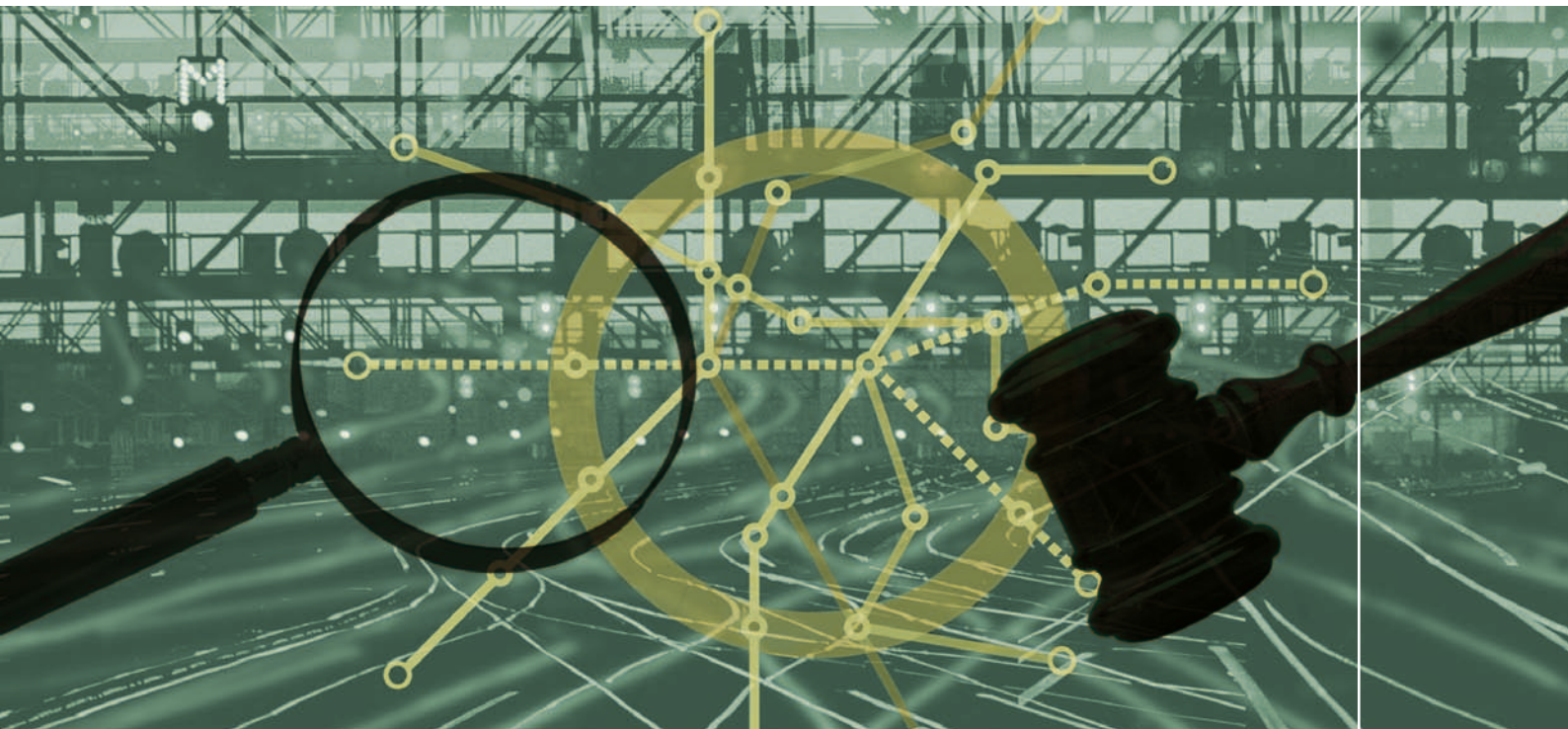
United Nations Office on Drugs and Crime

Vienna International Centre, PO Box 500, 1400 Vienna, Austria
Tel.: (+43-1) 26060-0, Fax: (+43-1) 26060-5866, www.unodc.org



UNODC

United Nations Office on Drugs and Crime



Basic training manual on investigating and prosecuting the smuggling of migrants

Module 7
Legislative issues



This publication is made possible through funding received from the European Union.

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Basic training manual on investigating and prosecuting the smuggling of migrants

Module 7:
Legislative issues



UNITED NATIONS
New York, 2010

© United Nations Office on Drugs and Crime, May 2010.

The description and classification of countries and territories in this study and the arrangement of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic system or degree of development.

Publishing production: UNOV/DM/CMS/EPLS/Electronic Publishing Unit.

Module 7. Legislative issues

A. Learning objectives

The present module looks at some of the legal issues that surround investigations into the smuggling of migrants. In particular, it will look at the legislative background with respect to the offence, and the alternative offences that could be prosecuted in cases where either no smuggling of migrants offences exist or there is insufficient evidence to support a charge of smuggling of migrants. At the end of this module, you should be able to:

- Understand the legislative background with respect to investigations into the smuggling of migrants and related offences.
- Identify other offences that may have been committed in the course of the smuggling of migrants.
- Identify areas of potential strength and weakness to be considered when a case moves to prosecution.

B. Legislative background

Your laws matter

By adopting the Smuggling of Migrants Protocol, countries become equipped to respond to the smuggling of migrants and have a strong basis for cooperating with other countries. To facilitate this process, UNODC has a model law on the smuggling of migrants.

Investigations carried out in different jurisdictions will be governed by different legislative frameworks. Ensuring that appropriate authority is sought and appropriate legislative procedures are followed can pose an investigative challenge to law enforcers who are seeking to mount investigations efficiently or apply investigative tactics creatively.

In some jurisdictions, specific anti-migrant smuggling legislation exists, while in others the smuggling of migrants may be criminalized under the criminal code. In still others, the smuggling of migrants may not be criminalized in any legal instrument. In the last-mentioned situation, prosecutors may have to rely on alternative offences to secure a conviction of smugglers of migrants.



When working with other jurisdictions, you must be aware of the rules and laws in that country. Failure to comply with rules and regulations could be fatal to your case!

Criminalization

Article 6 of the Smuggling of Migrants Protocol sets out the types of criminal conduct that States parties are required to criminalize.

- The procurement for material gain of the illegal entry of a person into a State party of which the person is not a national or permanent resident (article 6, paragraph 1 *(a)*).
- Producing, procuring, providing or possessing fraudulent travel or identity documents when done for the purpose of enabling smuggling of migrants (article 6, paragraph 1 *(b)*).
- Enabling a person to remain in a country where the person is not a legal resident or citizen without complying with requirements for legally remaining by illegal means (article 6, paragraph 1 *(c)*).
- Organizing or directing any of the above crimes (article 6, paragraph 2 *(c)*).
- Attempting to commit any of the above offences, subject to the basic concepts of the State party's legal system (article 6, paragraph 2 *(a)*).
- Participating as an accomplice in any of the above offences, subject to the basic concepts of the State party's legal system (article 6, paragraph 2 *(b)*).

Article 3, subparagraph *(b)*, further defines illegal entry as the crossing of (international) borders without complying with the necessary requirements for legal entry into the receiving State.

At this point, you need to refer to your own national legislation and judicial authorities for guidance, but the above provisions of the Smuggling of Migrants Protocol clearly outline what has been internationally agreed on with respect to criminalization. It should assist you when examining the type of conduct you should be seeking to prove.

In some jurisdictions, a person can be prosecuted for turning a blind eye to smuggling, that is, he or she may not actively participate in the offence but is guilty by virtue of his or her failure to do anything about it.



Example: criminal legislation — the Netherlands

Criminal Code, article 197a, Smuggling of human beings.

1. Whoever provides assistance to another person to acquire entry to the Netherlands or to transit the Netherlands, another Member State of the European Union, Iceland, Norway or any State which has acceded to the Protocol against the Smuggling of Migrants by Land, Sea and Air concluded in New York on 15 November 2000 supplementing the Organized Crime Convention concluded on 15 November 2000 in New York, or provides that person with an opportunity or the means or information enabling him to do so, whilst cognizant of the fact or having serious reason to believe that the said entry or transit is illegal, will be guilty of the smuggling of human beings and receive a penal sentence of a maximum of four years or a pecuniary penalty of the fifth category.

2. Whosoever in pursuit of gain provides assistance to another person to acquire residence in the Netherlands or another Member State of the European Union, Iceland, Norway or any State which has acceded to the Protocol mentioned in the first paragraph, or provides that person with an opportunity or the means or information enabling him to do so, whilst cognizant of the fact or having serious reason to believe that the said residence is illegal, will be punished with a penal sentence of a maximum of four years or a pecuniary penalty of the fifth category.

3. If one of the offences described in the first and second paragraphs is committed whilst exercising any office or practising any profession, a penal sentence of a maximum of six years or a pecuniary penalty of the fifth category will be awarded and the holder may be disqualified from holding that office or practising that profession and the judge may order his/her sentence to be made public.

4. If one of the offences described in the first and second paragraphs is committed by a person who makes a profession of doing so or who habitually does so, or by several persons acting in association, a penal sentence of a maximum of eight years or a pecuniary penalty of the fifth category will be awarded.

5. If one of the offences described in the first and second paragraphs results in severe bodily injuries or it is feared that a person's life may be in jeopardy, a penal sentence of a maximum of twelve years or a pecuniary penalty of the fifth category will be awarded.

6. If one of the offences described in the first and second paragraphs results in death, a penal sentence of a maximum of fifteen years and a pecuniary penalty of the fifth category will be awarded.

Aggravating and mitigating factors

You should also consider the possibility that aggravating circumstances may be involved. Article 6, paragraph 3 of the Smuggling of Migrants Protocol requires States parties to adopt legislative and other measures to establish aggravating circumstances, including those that:

- Endanger or are likely to endanger the lives or safety of the migrants concerned; or
- Entail inhuman or degrading treatment, including exploitation of the migrants.

Examples of such circumstances include (but are not limited to):

- Abuse of a child or abuse of a position of trust or authority.
- Connections with other crimes such as drug smuggling and trafficking in persons; for instance, migrants may be compelled to carry drugs when they are themselves smuggled.¹
- Conditions in which migrants are smuggled: was the boat, bus or car particularly hot, cold, wet, dry or crowded? Was the current at sea particularly strong?

¹It should be noted that the exploitation of a migrant by compelling him or her to carry drugs or perform other illegal activities in the course of being smuggled could mean that he or she is a victim of trafficking in persons.

On aggravating (and mitigating) circumstances see also module 3.

Some possible aggravating and mitigating factors that could influence sentences are:

<i>Aggravating factor</i>	<i>Mitigating factor</i>
Methodology: high level of risk placed upon those smuggled, e.g., people sent unattended in a boat that is not sea worthy.	No risk is posed to smuggled migrants as a result of the smuggling methodology used.
High number of migrants involved.	Low number of migrants involved.
Deaths of migrants.	Migrants kept safe and secure.
Criminal record with pattern of repeated offences involving the smuggling of migrants.	One-off occasion (e.g., young offender with no criminal record).
Poor conditions of travel (lack of air, water, food, extremely hot or extremely cold temperatures, and unsafe sea conditions).	Good conditions of travel.
High profit, e.g., sole income is profit.	Low profit.
Use of violence against migrants, e.g., assaulting migrants to control them during travel.	No use of violence.
Exploitation of migrants or potential for trafficking in persons.	
Resisting arrest, use of violence or otherwise uncooperative with law enforcers.	Cooperative with police; providing evidence against the smuggling network.
Presence of children.	
Involvement of public officials.	
Commission of other offences (for instance, violence against smuggled migrants, e.g., sexual assault during travel).	

Non-criminalization

It is imperative to remember that the Smuggling of Migrants Protocol in no way criminalizes the involvement of the migrants themselves for having been smuggled, by virtue of article 5 of the Protocol, which reads:

“Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol.”



Questions and exercises

- Does specific anti-migrant smuggling legislation exist in your country?
- If anti-migrant smuggling legislation does exist in your country, how does it differ from the Smuggling of Migrants Protocol?

For instance, are the following criminalized:

<i>Criminal conduct</i>	<i>Criminalized? Yes/No</i>	<i>Relevant domestic law</i>	<i>Example of conduct</i>
Procurement for material gain of the illegal entry of a person into a State party of which the person is not a national or permanent resident.			E.g., Mr. D receives \$1,500 for driving Mr. M five kilometres over the border into a State that he knows Mr. M is entering illegally.
Producing, procuring, providing or possessing fraudulent travel or identity documents when carried out for the purpose of enabling the smuggling of migrants.			E.g., Mr. P provides Ms. M with Ms. O's passport for a payment of \$1,500 so that Ms. M can gain illegal entry into a country.
Enabling a person to remain in a country where the person is not a legal resident or citizen without complying with requirements for legally remaining, by illegal means.			E.g., Ms. A, a school administrator, personally receives \$1,500 to register Mr. M as a student at the school, knowing that Mr. M has no intention of studying but wants merely to remain in the country.
Organizing or directing any of the above crimes.			E.g., Mr. S arranges for Mr. P to provide a fraudulent passport to Ms. M so that she can gain illegal entry into a country.
Attempting to commit any of the above offences.			E.g., Mr. D receives payment to drive Mr. M into a State that he knows Mr. M is entering illegally, but is intercepted at the border.
Participating as an accomplice in any of the above offences.			Mr. B accompanies Ms. M on her journey into a country of destination in the event that she has difficulties crossing the border with a falsified passport.

- Provide one additional example of each crime in the “Example of conduct” column.
- If no anti-migrant smuggling legislation exists in your country, what other offences are introduced to secure the conviction of the smugglers of migrants?

- Does specific anti-migrant smuggling legislation exist in other countries that you typically partner with?
If not, what other legislative provisions are relevant to your joint work?
- If you do not know the relevant laws of the countries that you partner with, how would you go about finding out what those laws are? Who would you approach?
- Is turning a blind eye to the smuggling of migrants a punishable offence in your country?
What would the consequences be if the person who turned a blind eye was a police officer or public official?
- Does the legislation you work with balance criminalization against human rights considerations?
- Are aggravating circumstances provided for in your legislation? If so, what are they?
- Have you had any experience of investigating or prosecuting cases of the smuggling of migrants involving aggravating circumstances?
- Where aggravating circumstances are involved in a case of the smuggling of migrants, how does sentencing change?

C. Other offences

In the course of smuggling migrants, it is highly likely that other offences will have been committed. The investigators may need, depending upon national laws and policies, to investigate all such offences. Alternatively, they may seek to prove other offences where initial suspicion of the crime of the smuggling of migrants cannot be corroborated (with all of its components) or where there may be no national legislation criminalizing the smuggling of migrants as such.

The list below outlines many other offences, or types thereof, that may be committed during the smuggling of migrants. The list is not exhaustive and does not seek to cover all the different legal systems and national laws. Its purpose is purely to give you an idea of the types of crime that may be committed. It should also be borne in mind that where too many offences are part of the charge, the case can become unmanageable.

Other offences can include:

- Transport-related offences:
 - Transportation without declaring goods in vehicle
 - Misrepresenting cargo or identity at a border
- Document-related offences/crimes of dishonesty:
 - Document fraud/forgery
 - Dishonest handling (of stolen passports for example)
- Immigration-related offences:
 - Clandestine entry
 - False statements made to border officer

- Harbouring an immigration offender
- Not surrendering to immigration bail
- Crimes of dishonesty:
 - Money-laundering
 - Theft (such as passports)
 - Forgery
 - Deception
 - Fraud
 - Corruption
 - Abuse of office
- Other criminal offences:
 - Murder
 - Involuntary manslaughter
 - Assault
 - False imprisonment or unlawful confinement
 - Kidnapping or abduction
 - Drug-related offences (possession, supply or trafficking)
 - Sham marriage
 - Perjury (in marriage cases)
 - Bigamy (as above)
 - Trafficking in persons
 - Participation in an organized criminal group
 - Bodily harm or injury
 - Sexual offences
 - Torture, or inhuman or degrading treatment
 - Weapons offences
 - Endangering lives contrary to dignity
 - Obstruction of justice
 - Interference with witnesses
 - etc.

When considering different offences, investigators need to be mindful that offences that have actually been committed and can be proved are not simply to be viewed as aggravating factors.² Viewing those offences as such often leads to the undermining of the case to be made for their seriousness.

Unless the other potential offence(s) is or are more serious than the smuggling of migrants in terms of the maximum possible sentence, then care must be taken not to deviate too far from the primary investigative aims. Obviously, if your investigation into the smuggling of migrants becomes a murder enquiry, then the murder offence would take priority. Always look to prove the most serious offence with the evidence that you have or can obtain.

² See section B above on aggravating and mitigating circumstances.

The smuggling of migrants is a deadly business

Smugglers of migrants often conduct their illegal activities with little or no regard for the lives of the people they smuggle.

The BBC reported that in 2006 alone, about 6,000 migrants from Africa died or went missing on the sea journey to the islands of one Western European country.

Every year, thousands of people flee from conflict, violence, drought and poverty in the Horn of Africa, across the Gulf of Aden, in search of relative safety. Some 30,000 people undertook this journey in 2007, and another 20,000 made it alive in the first five months of 2008. Many of the people attempting this journey used the services of smugglers of migrants to cross the treacherous Gulf of Aden; the smugglers operating this route are notorious for their brutality. Fatality rates are very high. Survivors have told harrowing tales of their ordeal: more than 100 people crammed into boats designed to carry 30 or 40, windowless storage spaces, people forced to sit without moving in urine, seawater, faeces or vomit, and being deprived of food and water, suffocation as a result of having other people sit on them, people being asked for more money to come out of the hold and being pushed back down when their money had been taken and men, women and children being assaulted by their smugglers with sticks, pipes, rifle butts or knives.

In April 2008, 54 people died in the back of a lorry after the air-conditioning system failed. Survivors told of how they had been just 30 minutes into their journey to the South-East Asian country of destination where they were hoping to find work, when conditions became unbearable and people began to suffocate. Passengers banged on the container's walls and frantically called the driver's mobile phone, but the driver, fearing that the police would be alerted, warned them to be quiet. When the driver finally stopped on a quiet road, he opened the lorry doors to discover that many of the migrants, most of whom were women, had collapsed. The driver ran away from the scene. One of the survivors from another South-East Asian country, 30 year-old Saw Win, said "If the truck had driven for 30 minutes more, I would have died for sure."

In July 2008, 13 people were found dead near the capital of a West Asian country. They had suffocated in a packed truck and their bodies were dumped in a field.



Questions and exercises

- Are there any other offences in addition to those listed above that could be relied in prosecuting a smuggler of migrants in your country?
- Consider the situation of Saw Win in the box above entitled "The smuggling of migrants is a deadly business"
 - List as many offences as you can that the driver of the truck could potentially be charged with.
 - List aggravating circumstances that may apply in the driver's case.
 - List any mitigating circumstances that may apply in the driver's case.

D. Prosecution matters

Actus reus requirement

The *actus reus* or material elements of the smuggling of migrants vary depending on the legislation of your country. In the case of the crime of smuggling, as defined in the Smuggling of Migrants Protocol, the *actus reus* requirement includes the following:

- Procurement of illegal entry or illegal stay of another person.
- Entry into another country by the other person who is neither a national nor permanent resident of that country.
- Agreement to receive a financial or other material benefit.

The Smuggling of Migrants Protocol does not define “procurement”. Generally speaking, this refers to the act of bringing about a specific result; in the case of the smuggling of migrants, this is the illegal entry of another person into a country.

Mens rea requirement

The *mens rea* requirement reflects the state of mind of the person charged with an offence. Only those with a sufficiently “guilty mind” can be found liable for a criminal offence. In certain jurisdictions and in certain cases, criminal liability may be imposed in “strict liability” offences, even in the absence of *mens rea*.

The requisite mental feature required in a case of the smuggling of migrants is that the person committed the material act(s) intentionally and in order to obtain a financial or other material benefit, directly or indirectly. Hence, smuggling for non-profit purposes does not fall within the scope of the Smuggling of Migrants Protocol.

The mental element can be proved in a number of ways. It should be noted that the Smuggling of Migrants Protocol requires that countries criminalize smuggling of migrants only when conducted intentionally, as per article 6, paragraph 1. This speaks to the mental element. However, countries are not precluded from allowing the *mens rea* requirement to be established through a lesser standard, that is, recklessness, wilful blindness or even criminal negligence, subject to the requirements of the domestic legal system.

Again, it is important to remember that the obligation set out in the Smuggling of Migrants Protocol to criminalize smuggling of migrants does not require that domestic legislation use the precise language contained in the definition of “smuggling of migrants”. Rather, domestic legislation should be drafted in such a way as to be consistent with your domestic legal framework, provided it comprises a combination of the constituent elements contained in the definition. It is also important to note that migrants are not to be made liable to criminal prosecution under the Smuggling of Migrants Protocol for the fact of having been the object of smuggling, as per article 5 of the Protocol.

Preparing a case for prosecution and ensuring admissibility of evidence

At the beginning of your investigation, identify what potential offences may have been committed, and consider what you need to prove in order for evidence to be admissible and the offences to be charged. The table below illustrates the process.

Example of the preparation of a case for prosecution

<i>Offence</i>	<i>Facts</i>	<i>Points to prove</i>	<i>Ways to obtain admissible evidence</i>
Smuggling of migrants	Car stopped at border. Mr. B is driving. Ms. M is concealed under a blanket in the boot.	Mr. B is obtaining financial or material gain.	Searching the vehicle. Searching Mr. B. Financial investigations. Searching Ms. M.
		Ms. M is not a resident of the country of destination.	Looking for documentation. Consulting immigration authorities
		Ms. M is entering the country illegally.	Obtaining statement from immigration officer. Finding documentation.
		Mr. B is aware that Ms. M is entering the country illegally.	Establishing that the boot was locked and Mr. B and Ms. M have each other's mobile phone numbers on their phone.

The investigator should collect evidence of facts with a view to proving them and producing such proof in an admissible form in court. Written statements often form the basis for evidence.³

See module 2D for guidelines for witness statements taken for investigations into the smuggling of migrants.

Aside from facts that can be proved, investigators need to collect as much circumstantial and corroborative evidence as possible. While circumstantial evidence alone is unlikely to prove a case, an overwhelming amount pointing to the guilt of the offender could do so with little or no direct evidence. Below is an example of circumstantial evidence that was used to secure a conviction.

³ An example of a witness statement is contained in annex I.



Example: circumstantial evidence

A group of migrants were seen walking up a beach in January. They were dripping wet. Cell site analysis of the boat owner's phone established that he was in the area. His boat was not in the harbour at the relevant time. Eventually, he was convicted of facilitating illegal entry.

When preparing a case for prosecution, always ensure that you have collected all available and relevant evidence and have presented it in such a way as to render it compelling in court. If particular evidence cannot be obtained, but something similar and relevant can, then consider providing the "best available evidence". An example of this is shown below.



Example: "best evidence"

A person arrives using a false passport. The passport is subsequently destroyed by police. However, a photocopy was retained by them. This photocopy becomes the best evidence.

Finally, when gathering your evidence always remember that the case may end in court. Evidence should be handled appropriately so as to avoid risks that would undermine your efforts to bring a smuggler of migrants to justice.



Example

Person A identifies himself to officer at border with false identification.

The officer compiles the following checklist:

Facts:

- Person A is present at border
- Person A presents false documentation
- Interrogated by officer
- Officer concludes — based on fingerprints — that the person is person B

Proof:

- Fingerprints were taken and compared and analysed by experts
- Would call officer to give testimony at trial who would testify that he or she was first called to person A (who was actually person B)
- Exhibit: false passport

Admissibility:

Admissibility rules are different in different jurisdictions. Find out what the rules in your jurisdiction are.

- Ensure that legislation, constitution and rights protections have been adhered to
- Officer acting under appropriate authority, followed proper legislation and procedure, provided notice, disclosure of good and bad facts

Using witnesses

In module 2 we looked at the issues surrounding the use of smuggled migrants as witnesses. These witnesses may often be your best resource and you should always look to use them, where possible. In doing so, due regard should be paid for their rights and safety. You may face a conflict between the need to keep the smuggled migrants in your country, if they have arrived at a destination country or are in transit, and the requirement to deport them. Some jurisdictions allow for temporary visas to enable smuggled migrants to stay and give evidence. Other jurisdictions allow them to stay indefinitely. If, however, your country does not have these provisions you could consider:

- Bringing the migrant back from his or her home country in time for the trial and returning him or her afterwards; or
- Using video or written testimony to transmit the testimony of the witness from his or her home country; or
- In some countries, it is sometimes acceptable to replace the witness at trial with a non-governmental organization representative or the law enforcer who interviewed the witness.

The above considerations are dependent, in the first instance, upon the legal requirements that exist within your country and the resources available to you. The latter two options may be beneficial for the physical protection of the witness. If such methods have not been considered or tried before, then it may be worth looking at them afresh, with appropriate consideration for how the safety of the migrant and his or her family can be protected when these techniques are being employed.

When dealing with witnesses, it must always be borne in mind that witnesses and/or their families may have been threatened by smugglers. Other cultural considerations play a role here: some migrants are believers in juju or voodoo and may have sworn an oath or have some other reason why they cannot cooperate with the criminal justice process. In these situations, creative approaches must be taken. Law enforcers and prosecutors may work with people who understand traditional practices in order to release witnesses from the “spell” under which they have been placed that prevents them from speaking.

See module 2D for guidance on conducting interviews.

Jurisdiction

When seeking a criminal justice outcome, investigators should always be mindful that in investigations into the smuggling of migrants, offences have often been committed in more than one country and could therefore be prosecuted in any of the countries concerned. A person should not be prosecuted more than once for the same criminal conduct.⁴ It is therefore important to identify cases that can be prosecuted in more than one jurisdiction as soon as possible and then decide which jurisdiction is the best one to prosecute them in. Generally, prosecution takes place in the jurisdiction where most of the criminality or most of the loss took place, but the decision should always be made on a case-by-case basis guided by the following principles.

- Existence of legislation
 - Does the legislation of the jurisdiction include the offence of smuggling of migrants?
- Sentencing powers
 - Does sentencing reflect the gravity of the offence?
- Location of the accused person
 - Is it possible to prosecute in that jurisdiction?
 - Are transfer or extradition proceedings possible?
- Division of prosecution
 - Cases may be complex and cross-border. Prosecution in more than one jurisdiction is not desirable.
 - What practical and realistic measures can be taken to allow a prosecution to take place in one jurisdiction?
- Witness attendance
 - Ensure measures are taken to give the best possible support to victim witnesses.
 - Where witnesses are in other jurisdictions, consider how evidence can be received in other forms (video link/writing).
 - Keep in contact with witnesses (by providing them with a mobile phone, checking on whether they can use e-mail etc.).
- Witness assistance or protection
 - What assistance can a witness be given in a particular jurisdiction?
 - Does the jurisdiction have a legal framework allowing protection or assistance?
 - If there is no such legal framework, is there a witness assistance programme or other protection available on a case-by-case basis?
 - What evidence is there that such a programme is effective?
 - Is there a possibility that a migrant smuggler could harm a witness in a particular jurisdiction?
 - Are there any other conflicts or potential conflicts that may affect the ability to protect witnesses?

⁴This is captured by the Latin term *ne bis in idem*.

- Delay
 - Are there backlogs that would delay the case? Delays should be minimized where possible.
 - What is the potential timescale for a case's coming to trial in a particular jurisdiction?
- Interests of victims of crime
 - Would the interests of victims of crime be prejudiced by the changing of jurisdiction?
- Evidential issues
 - Cases should proceed based on the best possible evidence. Admissibility of evidence varies from jurisdiction to jurisdiction.
 - Given the evidence available and the rules of admissibility, which jurisdiction would offer the best chance of successful prosecution?
- Legal requirements
 - Decisions on where to hear cases cannot be taken in order to avoid complying with legal requirements in one jurisdiction or another.
- Proceeds of crime
 - Where are assets held?
 - Where is the best chance of securing asset seizure?
 - Will jurisdictions share recovered assets with other jurisdictions?
 - Do victims of crimes have access to any recovered assets as compensation?
- Resources and costs of prosecuting
 - This should be a consideration only when all other factors are balanced equally.



Questions and exercises

- Police search a house in Anyland where they find 10 migrants who are in the country irregularly. The house is owned by Mr. A. Complete the table below with a view to charging Mr. A with certain offences and ensuring that evidence is admissible: Officer concludes — based on fingerprints — that the person is person B

<i>Offence</i>	<i>Facts</i>	<i>Points to prove</i>	<i>Ways to obtain admissible evidence</i>

- Have you had any experience with a case of smuggling of migrants that did not succeed because of evidentiary issues? If so, compile a checklist as above for that case.

- What challenges have you faced in working with witnesses in your country?
How did you address these challenges?
- Are temporary visas available to smuggled migrants who are willing to remain in the country to give evidence?
- What are some low-cost measures that could be used to protect witnesses before and during the trial?
- With whom would you need to cooperate to protect the family of the witness if it is in another jurisdiction?
- How would you learn what relevant rules and laws are applicable in other jurisdictions? Whom would you contact?

E. Concluding remarks

When an investigation into the smuggling of migrants commences, it is important to remember the nature of the crime committed. Combine this with the consideration of other offences that may have been committed in the course of the smuggling of migrants, and the evidential standard of proof required within your legal system.

Consider all offences that may have been committed and decide, in conjunction with prosecutors, judges or senior officers what charges should be brought and agree on the best possible evidence required to support that prosecution or prove the charges.

Finally, always remember that prosecutions do not always need to be brought into your own country. It may be as effective or more effective to prosecute smugglers of migrants in another country. Early work with prosecutors, judges and international partners will assist you in this regard.



In all the work you do in investigating and prosecuting smugglers of migrants, human rights considerations come into play. Take guidance from applicable treaties and your domestic legislation. Not only is respecting the rights of smuggled migrants and smugglers of migrants obligatory for humanitarian reasons, but it will also strengthen the likelihood of securing a prosecution by eliminating operational pitfalls in the course of investigation.

For more on human rights considerations, see module 9.



Self-assessment questions

- What international and domestic instruments provide the legislative framework for investigations into the smuggling of migrants?
- What are the constituent elements of the smuggling of migrants?
- What other offences may have been committed in the course of the smuggling of migrants?
- What legislative provisions are most relevant to the smuggling of migrants for you and your work in your domestic context?
- What can be considered aggravating and mitigating circumstances in cases of the smuggling of migrants?
- What factors should be considered in determining where a case on the smuggling of migrants should be tried?
- What is the value of conducting interviews and taking witness statements in cases of the smuggling of migrants?



UNODC

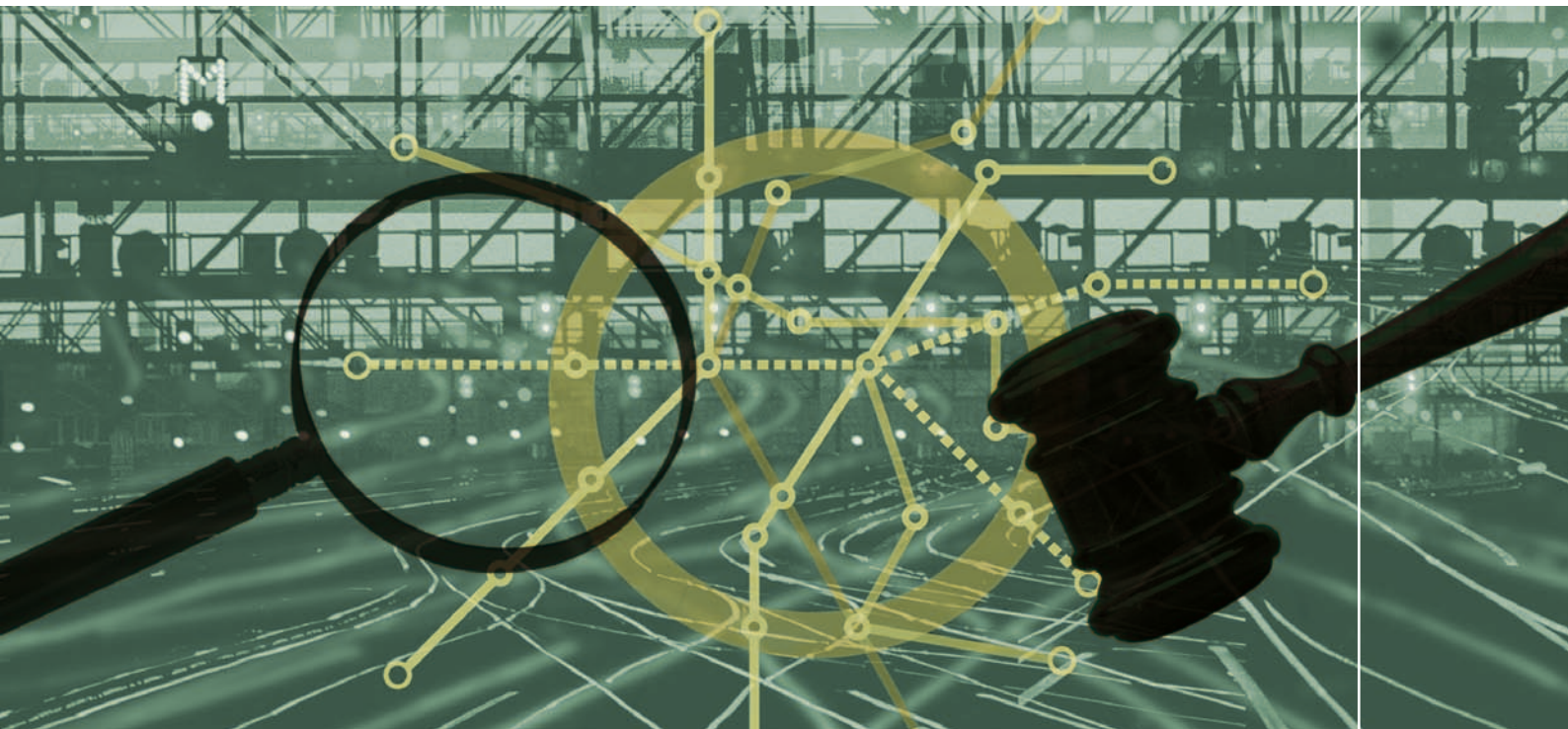
United Nations Office on Drugs and Crime

Vienna International Centre, PO Box 500, 1400 Vienna, Austria
Tel.: (+43-1) 26060-0, Fax: (+43-1) 26060-5866, www.unodc.org



UNODC

United Nations Office on Drugs and Crime



Basic training manual on investigating and prosecuting the smuggling of migrants

Module 8
International cooperation



This publication is made possible through funding received from the European Union.

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Basic training manual on investigating and prosecuting the smuggling of migrants

Module 8:
International cooperation



UNITED NATIONS
New York, 2010

© United Nations Office on Drugs and Crime, May 2010.

The description and classification of countries and territories in this study and the arrangement of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic system or degree of development.

Publishing production: UNOV/DM/CMS/EPLS/Electronic Publishing Unit.

Module 8. International cooperation

A. Learning objectives

The present module examines some of the issues of international cooperation that will feature in most, if not all, investigations. Despite its importance, international cooperation is often very difficult to achieve. At the end of this module, you should understand:

- The types of international cooperation that can be provided, as defined by the Organized Crime Convention.
- Different types of formal and informal cooperation.
- How to request extradition and mutual legal assistance from international partners.
- The basis for establishing a joint investigation team.
- Some of the key issues associated with international cooperation, and the possible means of minimizing risks and overcoming challenges.

B. Types of international cooperation

When international cooperation goes well, the results can be excellent, as shown by the case study below.



Case study

Successful international cooperation

Operation B in a Western European country began as an intelligence scoping exercise.

Over a period of 6 months, 10 targets were identified as the most significant human smugglers within a network. The 10 smugglers were of West Asian origin. Intelligence-gathering began, followed by tactical analysis of this scoping and of the methodology of this network. The operational team carried out surveillance and began gathering evidence. Countries of high significance to this criminal network were identified and the intelligence dissemination process began.

Meetings were held at Europol and the European Union's Judicial Cooperation Unit (Eurojust), facilitating the sharing of intelligence.

The heads of the criminal networks conducted their business in “secure cafes” in the capital of that Western European country. In these cafes, the subjects would make hundreds of telephone calls to their networks. They would call the irregular immigrants, sponsors, transport managers, drivers and overseas facilitators.

Foreign intercept evidence was used as part of the investigation.

Estimates are that 200,000 people were smuggled into that Western European country by this network.

Enforcement

On 11 October 2005, the intelligence phase of operation B was concluded. Fourteen residential and business premises were raided, with 21 subjects arrested. Five hundred police officers took part in the raids. Approximately £70,000 in cash was seized. Large amounts of financial and human smuggling evidence and 100 SIM cards and handsets were seized as evidence. A press release was issued which was circulated throughout Europe.

Impact assessment

The smugglers of migrants were surprised by the arrests, as the principal subjects considered themselves untouchables.

The flow of false and forged documents was severely disrupted.

There was a general rise in the price of smuggling from the West Asian country of origin, with prices up to £7,000 from £3,500-£4,000.

Operation B resulted in sentences amounting to about 65 years of imprisonment.

Formal and informal cooperation

As exemplified in the case study below, smuggling of migrants occurs transnationally, making international cooperation an essential prerequisite to preventing and combating the crime. Co-operation between law enforcement authorities can be formal or informal.

- Formal international cooperation could be based on existing bilateral or multilateral agreements, including agreements on mutual legal assistance in criminal matters, and on extradition, or on the Organized Crime Convention, depending on the jurisdiction of the countries involved, followed by a formal letter of request made when an official investigation is under way or during the judicial proceedings.
- Informal cooperation involves operational police-to-police contacts requiring assistance for investigation before any judicial proceedings are in place. In such instances, the necessary arrangements can usually be made between the relevant police officers or agencies without invoking mutual legal assistance agreements or conventions.



Case study

Cases of the smuggling of migrants can involve several countries. For instance, in one of the biggest smuggling cases to be tried in a Western European country of destination, thousands of nationals of a South Asian country were brought to that destination country illegally, using the fake passports of a country in Southern Africa.

The system used was extremely professional and sophisticated. Passport factories were uncovered in the destination country. Migrants would travel from the South Asian country to the Southern African transit country. There, they would pay US\$ 500 for a genuine passport of that transit country, fraudulently issued by corrupt officials. They would then enter the destination country. With the passports of the transit country, the migrants could stay in the destination country for six months without a visa. Some would enter into sham marriages to extend their stay; others would register with colleges but not undertake any course of study. The migrants involved would pay up to US\$ 30,000 for these services.

The destination country's arm of the migrant smuggling gang was led by two persons of South Asian background. One pleaded guilty and was given 10 years in prison. The other was also given a sentence of 10 years, issued with a deportation order and a US\$ 100,000 confiscation order.

The issue whether to cooperate formally or informally is often a difficult one to resolve. Laws may prohibit any type of cooperation or allow only one type. In reality, both forms of cooperation might be pursued in parallel.

The investigator's role

The investigator's role in international cooperation is best summarized by the following actions:

- Identify if or where cooperation is required.
- Identify what evidentiary materials are required.
- Identify what your legal constraints are.
- Identify what approach is likely to produce what you seek.
- Seek advice from senior officers, prosecutors or investigating judges, as appropriate, before embarking on a course of international cooperation.
- Consider the use of INTERPOL/Europol or other regional law enforcement agencies.¹
- Respond quickly to requests made to you by international partners.

Investigators must make full use of any liaison officers who are available in the countries where information is sought and should consider using diplomatic channels or embassies, where appropriate.

¹ For instance, consider consulting the West African Police Chiefs Committee, the Central African Police Chiefs Committee, the Southern African Regional Police Chiefs Cooperation Organization, the East African Police Chiefs Cooperation Organization, the Association of Southeast Asian Nations Chiefs of Police, the Commission of Chiefs of Police of Central American and the Caribbean, the South Pacific Chiefs of Police Conference and the Association of Caribbean Commissioners of Police.

Considerations when commencing an investigation

When commencing an investigation into the smuggling of migrants, it is useful to identify which countries may be able to assist and how as illustrated in the table below:

Country	Intelligence	Information sought
Source	Subjects arrested lived in a named town.	Information on financial aspects (accommodation), associates etc. Intelligence from the community.
Transit	Transited by way of this country. May have remained there for several days.	Routes. Potential accommodation sites. Forgers. Tickets etc.
Destination	Smuggled migrants and smugglers of migrants may exist in an ethnic community. Migrants may be exploited.	Financial intelligence. Associates. Possible connections to illegal work or exploitative situations.

?	Questions and exercises
<ul style="list-style-type: none"> • Does the law of your country allow for formal cooperation? • Does the law of your country allow for informal cooperation? • Explain what is meant by formal cooperation. • Explain what is meant by informal cooperation. • Explain the difference between formal and informal cooperation. • Is there a unit in your country responsible for facilitating international cooperation? 	

C. Framework for international cooperation

United Nations Convention against Transnational Organized Crime as a basis for international cooperation

Article 1 of the Organized Crime Convention states that the purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively. Further to this, article 2 of the Smuggling of Migrants Protocol reiterates its purpose of promoting cooperation to prevent and combat the smuggling of migrants, while protecting the rights of smuggled migrants.

The Organized Crime Convention contains different provisions on both formal and informal cooperation in criminal matters which are also applicable to the Smuggling of Migrants Protocol, namely:

- Extradition (article 16)
- Mutual legal assistance (article 18)

- Transfer of criminal proceedings (article 21)
- Transfer of sentenced persons (article 17)
- Cooperation for purposes of confiscation to deprive perpetrators of criminal assets (articles 13 and 14)
- Cooperation between law enforcement authorities, including exchanging information and cooperation in conducting inquiries (article 27)
- Joint investigations (article 19)
- Cooperation in using special investigative techniques (article 20)

Article 27 of the Organized Crime Convention on law enforcement cooperation establishes the scope of the obligation to cooperate. Subject to their respective domestic legal and administrative systems, States parties are to cooperate closely in terms of law enforcement in the areas prescribed in paragraphs 1 and 2, by:

- Strengthening channels of communication among law enforcement authorities (para. 1 *(a)*)
- Undertaking specific forms of cooperation in order to obtain information about persons and movements of the proceeds and instruments of crime (para. 1 *(b)*)
- Sharing items or substances for investigative purposes (para. 1 *(c)*)
- Promoting exchanges of personnel, including the posting of liaison officers (para. 1 *(d)*)
- Exchanging information on criminal means and methods used (para. 1 *(e)*)
- Other cooperation for the purpose of facilitating early identification of offences (para. 1 *(f)*)

This article also calls upon States parties to consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies. Where no such agreement or arrangement is in place, the Convention may provide the basis for mutual law enforcement cooperation (para. 2).

In addition to the provisions in the Organized Crime Convention, the Smuggling of Migrants Protocol also contains several requirements on cooperation and assistance. Each State party to the Protocol is required to:

- Cooperate to the fullest extent possible to prevent the smuggling of migrants by sea (article 7)
- Render assistance to a State party that has the right to board a vessel flying its State flag (article 8, para. 1)
- Inform the flag State if it has boarded its vessel (article 8, para. 3)
- Respond expeditiously to a request for determination if a vessel is entitled to claim that State as the State of its registry (article 8, para. 4)
- Respond expeditiously to a request for authorization to board, search and take other measures with respect to a vessel flying its flag (article 8, para. 4)
- Designate an authority to assist or respond to requests for assistance concerning such vessels (article 8, para. 6)

- Exchange information with other relevant States regarding the smuggling of migrants, consistent with domestic legal systems (article 10, para. 1)
- Comply with conditions imposed upon it by States sending such information (article 10, para. 2)
- Cooperate with each other and competent international organizations and non-governmental organizations to ensure adequate training to prevent and eradicate smuggling of migrants (article 14, para. 2)



Where the Organized Crime Convention has not been signed or there is no other legal basis for international cooperation, the principles of reciprocity and courtesy should always be borne in mind.

Bilateral and regional agreements

Memorandums of understanding and regional agreements may cover a wide range of investigative actions including:

- Intelligence development
- Activities such as controlled deliveries, surveillance or communication interceptions (see module 5)
- Establishing what evidence is available before a formal request is made to obtain that evidence

Cooperation also exists through regional or international enforcement organizations such as Europol and INTERPOL or other regional law enforcement agencies, that have offices in every country.



Questions and exercises

- Is your country party to any bilateral or multilateral international cooperation agreements?
- Has your country ever used the Organized Crime Convention as the basis for cooperation?
- Cooperation with which countries would you most benefit from when conducting investigations into the smuggling of migrants? Why?
- Where no bilateral agreement is in place with a country that you need to cooperate with, how would you go about cooperating with it?
- Does your country have any memorandums of understanding with other countries that could facilitate cooperation to combat the smuggling of migrants?

D. Informal cooperation

Informal cooperation (also known as police-to-police or agency-to-agency assistance) is the exchange of information between law enforcement and/or regulatory agencies and their foreign counterparts without the use of a formal mutual legal assistance request agreement.

Informal cooperation can be engaged in before an investigation becomes official and before the commencement of court proceedings (for example, in conducting surveillance or taking voluntary witness statements). Where there are prosecutorial objectives, informal communications between police will need to be formalized so as to ensure the admissibility of communications in court.

Informal cooperation can be more efficient and less expensive than formal cooperation. Police-to-police contact is arguably the fastest, cheapest and most flexible means of seeking information or intelligence and should be used wherever appropriate. This form of contact can be carried out through:

- INTERPOL, Europol and other regional law enforcement agencies
- Local crime liaison officers
- Any applicable memorandums of understanding
- Any regional arrangements (formal and informal)

Where the authorities of two States have built a relationship of trust, informal cooperation can lead to increased bilateral cooperation between the central authorities (such as exchange of officials at departments or ministries), or between local authorities on both sides of a border (such as police and customs authorities). Such cooperation may eventually be guided by bilateral executive agreements between the agencies involved.



The INTERPOL website offers links to police agencies around the world. See <http://www.interpol.int/Public/Links/PolJust.asp>.

Informal cooperation should comply with local procedures. These vary from State to State but typically involve passing a request through a central liaison unit or officer. In urgent cases, it may be possible to make direct officer-to-officer contact, with the general requirement that the liaison unit or officer be informed of the contact.

Informal requests, depending on the jurisdiction, should not be used if you intend to present admissible evidence from another jurisdiction in a court within your jurisdiction. However, if you are going to use evidence in court, it is safe to make a formal request.

Always find out how informal requests are made in your country. Do not assume that arrangements are the same in every circumstance or for every country for they can vary greatly.

Where they exist, always take advice from your liaison units or officers and always inform central authorities of prior informal contacts.



Example: cross-border cooperation — transborder observations

European Union (EU) police teams are allowed to follow tracks or survey in another EU country when the perpetrators cross borders. The policemen are allowed to carry their weapons and use their police vehicles. The authorization for the observation is given by the liaison judge in Europol for 24 hours (emergency demand) or 30 days (ordinary demand). For instance, French police have followed criminals from Paris to Venice through Switzerland.



Questions and exercises

- In your country, what is the procedure for cooperating informally with another country?
- Is your country party to any regional agreements that could facilitate cooperation to combat the smuggling of migrants?
- Are there any arrangements, similar to those described above, in place in your region to allow law enforcers in your country to follow perpetrators into other countries?
- What is the procedure for using these arrangements?

E. Extradition

Extradition principles and requirements

Extradition is a means of cooperating formally.

Extradition is the surrender of a person sought by the requesting State for criminal prosecution or for the enforcement of a criminal sentence in relation to an extraditable offence.

Extradition is addressed by article 16 of the Organized Crime Convention, which sets a basic minimum standard for extradition and encourages the adoption of a variety of mechanisms to streamline extradition processes.

Some of the most important extradition principles and requirements are the following:

- There must be a legal basis for extradition

Some States require a treaty to extradite and some do not. In States that do require a treaty, bilateral and multilateral treaties can provide the basis for extradition. Multilateral treaties such as the Organized Crime Convention are efficient with regard to extradition, as they require an obligation involving many States at once.

- Sufficient evidence of the alleged crime

In using the Organized Crime Convention as a legal basis for extradition in cases of the smuggling of migrants, the persons sought for extradition must be located in the territory of the requested State party and there must be overwhelming evidence of a person's criminal conduct.
- Dual criminality

The requesting State must prove that the criminal offence for which extradition is requested must be punishable under the domestic law of both the requested and the requesting State. This condition reiterates the need to criminalize smuggling of migrants.
- Specialty

States must specifically detail the offences for which the extradition request is being made. The requesting State is obligated to prosecute only those offences.

With particular regard to migrant smuggling offences, it is essential to achieve convergence in national laws so that relevant criminal conduct is defined in accordance with the definition contained in the Smuggling of Migrants Protocol (article 3 (a)).
- Double jeopardy

A State may deny a request for extradition in cases where the person sought has already been tried for the offence contained in the request.
- Non-extradition of nationals

Article 16, paragraph 11, of the Organized Crime Convention, makes possible the temporary surrender of the person sought on the condition that he or she will be returned to the requested State party to serve the sentence imposed. Where the requested State refuses to extradite on the grounds that the person concerned is its own national, the State is seen to have an obligation to bring the person to trial. This illustrates the principle of *aut dedere aut judicare* (extradite or prosecute) and requires the establishment of an appropriate jurisdictional basis. Where extradition is requested for the purpose of enforcing a sentence, the requested State may also enforce the sentence that has been imposed in accordance with the requirements of its domestic law.

Economic Community of West African States (ECOWAS) Convention on Extradition

Signed in Abuja in August 1994, the ECOWAS Convention on Extradition understands extradition to mean the surrender of all persons within the territory of the requested State:

- Who are wanted for prosecution for an offence or
- Who are wanted by the legal authorities of the requesting State for the carrying out of a sentence

Contents of the extradition request

The following information should always be included in extradition requests:

- Identity of the person sought:
A description of the person sought and other information that may be relevant to establishing his or her identity, nationality or location
- Facts and procedural history of the case:
An overview of the facts and procedural history of the case, including the applicable law of the requesting State and the criminal charge against the person sought
- Legal provisions:
A description of the offence and applicable penalty, with an excerpt or copy of relevant parts of the law of the requesting State
- Statute of limitations:
Any relevant limitation period beyond which prosecution of a person cannot lawfully be brought or pursued
- Legal basis:
A description of the basis upon which the request is made (e.g., national legislation, the relevant extradition treaty or arrangement or, in the absence thereof, by virtue of comity (legal reciprocity))

F. Mutual legal assistance

What is mutual legal assistance?

Mutual legal assistance is a type of formal international cooperation through which States seek and provide assistance in gathering evidence for use in the investigation, prosecution and adjudication of criminal cases. It covers a wide spectrum.

According to article 18 of the Organized Crime Convention, mutual legal assistance may include:

- Taking evidence or statements
- Effective service of judicial documents
- Executing searches and seizures
- Examining objects and sites
- Providing information, evidence and expert evaluations, documents and records
- Identifying or tracing proceeds of crime, property, instrumentalities and other material for evidentiary purposes
- Facilitating the appearance of witnesses
- Any other kind of assistance not barred by domestic law

UNODC Mutual Legal Assistance Request Writer Tool

UNODC has developed a Mutual Legal Assistance Request Writer Tool to help practitioners streamline the process of lodging requests. This is a user-friendly computer-based tool which is easily adjustable to a State's laws and practices. It requires almost no prior knowledge of or experience with mutual legal assistance and does not require Internet access.

The Mutual Legal Assistance Request Writer Tool is available free of charge in English, French, Portuguese, Russian and Spanish and selected other languages.

For more information, visit www.unodc.org/mla/index.html.

Contents of mutual legal assistance requests

Drafting requests for mutual legal assistance requires some knowledge of the legislation, processes and requirements of relevant countries. As indicated in the box above, the UNODC Mutual Legal Assistance Request Writer Tool can make this process easier and more efficient.

In general, the requirements of:

- Relevant international treaties such as the Organized Crime Convention
- Domestic law
- The requested State

must be taken into consideration in preparing a request for assistance.

The written request for assistance will need to address the following points:

- Identification:
 - Identify the office or authority making the request, and the authority conducting the investigation or prosecuting in the requesting State
 - Include contact details of responsible officials, including phone, fax and e-mail addresses, if possible
- Prior contact:
 - Detail any prior contact between officers in the requesting and requested States pertaining to the subject matter of the request
- Use of other channels:
 - Where a copy of the request has been or is being sent through other channels, this should be made clear in the request
- Acknowledgement of the request:
 - A cover sheet incorporating the acknowledgement for completion and return to the requesting State

- Indication of urgency and/or time limit:

A prominent indication of and reason for any particular urgency or time limit within which the request must be complied with
- Confidentiality:

A prominent indication of any need for confidentiality and the reason for this, and the requirement of consulting with the requesting State, prior to execution, if confidentiality cannot be maintained. More information about classifying information is contained in module 6.E
- Legal basis for the request:

A description of the basis on which the request is made (e.g., bilateral treaty or multilateral convention or scheme or, in the absence thereof, reciprocity)
- Summary of the relevant facts:

A summary of the relevant facts of the case including, to the extent possible, full identification details of the alleged offender(s)
- Description of the offence and applicable penalty:

A description of the offence and applicable penalty, with an excerpt or copy of the relevant parts of the law of the requesting State
- Description of the evidence or assistance requested:

A description of the evidence or other assistance requested
- Clear link between the proceeding(s) and evidence or assistance sought:

A clear and precise explanation of the connection between the investigation, prosecution or proceedings and the assistance sought (that is, a description of how the evidence or other assistance sought is relevant to the case)
- Description of the procedures:

A description of the procedures to be followed by the requested State's authorities in executing the request, to ensure that the request achieves its purpose, including any special procedures to enable any evidence obtained to be admissible in the requesting State, and reasons why the procedures are required
- Presence of officials from the requesting State at the execution of the request:

An indication of whether the requesting State wishes its officials or other specified persons to be present at or participate in the execution of the request and the reason for such a request
- Language:

All requests for assistance should be made in or accompanied by a certified translation into a language specified by the requested State

The ECOWAS Convention on Mutual Assistance in Criminal Matters

The Economic Community of West African States (ECOWAS) Convention on Mutual Assistance in Criminal Matters was signed in July 1992 and entered into force on 28 October 2003. The scope of the application of mutual legal assistance as defined by article 2 of the ECOWAS Convention includes:

- Taking evidence or statements
- Assisting in assuring the availability of detained persons or others to give evidence or assist in investigations
- Effecting service of judicial documents
- Executing searches and seizures
- Forfeitures and confiscations of the proceeds of crime
- Examining objects and sites
- Providing information and evidentiary items
- Providing originals or certified copies of relevant documents and records

G. Central authorities

Requests for assistance are to be made by designated central authorities. Designated central authorities are to have the responsibility and power to receive requests for assistance and to execute them, or pass them on to competent national authorities. A country may have a unit (generally staffed by law enforcement officers) that processes enquiries through “informal” arrangements such as memorandums of understanding, bilateral agreements and the like. This procedure is likely to be distinct from that of the central authority which deals only with “formal” requests as defined by the Organized Crime Convention.

Where it becomes apparent that the request involves substantial cost, the requesting and requested States should consult with each other to determine the terms and conditions under which the request is to be executed and the manner in which the costs are to be borne. The sharing of confiscated assets between States is an important way to encourage cooperation, as encouraged by the Organized Crime Convention article 14, paragraph 3.

Staff at the central authority should ideally have the capacity to speak different languages, have access to reliable translation services and be able to apply creative solutions to language barriers. For example, staff at the central authority could seek assistance from other governmental departments and missions abroad or even from the requesting or requested State.

In drafting written requests in accordance with the above requirements, it must be borne in mind that requests that are overly lengthy may not achieve the desired outcome. Bearing this in mind, the following basic steps should be considered:

- Be highly specific.
- Link the existing investigation or proceedings to the assistance required.
- Specify the precise assistance sought.
- Focus on the end result rather than on the method of securing it. It may be possible, for instance, for the requested State to obtain the evidence by means of a production or other court order, rather than by means of a search warrant.

The basics that must be addressed in a request are as a minimum:

- The legal basis for the request.
- The type(s) of assistance you are requesting and details of each.
- The national authority dealing with the case.
- Prior case-related contact between you and the requested State's authorities.
- Alleged offences and related provisions in national laws.
- Available information on suspects or alleged offenders and entities or organizations.
- Summary of the facts and procedural history of the case.
- Whether and why the request is urgent and/or confidential.
- The particular execution and procedural requirements that the requested State should fulfil.

UNODC provides a database of competent national authorities at www.unodc.org/compath/en/index.html.

H. Information-sharing

States are required to share information

States are required to share information either on a voluntary basis or in accordance with existing agreements or arrangements.

Without the presence of effective channels of communication, operational and general information cannot be obtained. Article 27 of the Organized Crime Convention encourages States to cooperate closely with one another. Article 10 of the Smuggling of Migrants Protocol requires States to exchange information with each other about:

- Embarkation and destination points as well as routes, carriers and means of transportation known to be or suspected of being used by smugglers of migrants.
- The identity and methods of smugglers of migrants.
- The authenticity and proper form of travel documents issued by a State party and the theft or related misuse of blank travel or identity documents.
- Means and methods of concealment and transportation of persons.
- Legislative experiences and practices and measures to prevent and combat the smuggling of migrants.
- Scientific and technological information useful to law enforcement, so as to increase the capacity of States to enhance each other's abilities to prevent, detect and investigate the smuggling of migrants.

To enhance international cooperation in this respect, effective systems of information-sharing should be developed at regional and international levels.



Case study

Europol Analytical Work Files (AWFs)

Europol operates a system of Analytical Work Files (AWFs). AWFs are operational support tools for active investigations, in which information derived from investigations of Member States is stored. Europol can then analyse the information that enters the AWF and provide this analysis to Member States to add value to their investigations. For instance, an AWF specifically on smuggling networks operating from place A to place B could be established. All information about these particular networks would be fed into this dedicated AWF by participating Member States. A particular AWF has a minimum of 2 participating States but all 27 European Union (EU) Member States may participate. Participating Member States would decide whether to allow new members to enter the group. There is also the possibility that partners with operational agreements could join the Work File almost as full members.

An AWF is the primary means by which Europol offers operational analytical support to investigations within Member States. AWF CHECKPOINT is the relevant database for combating the smuggling of migrants. Its purpose is to assist Member States in preventing and combating the forms of criminality associated with the facilitation of irregular immigration within and into EU by organized criminal groups. AWFs utilize a “target group”-oriented approach.

Information on how to request the opening of a target group is available in all EU languages via the Europol National Units. Operational and personal data can be exchanged between the members of an AWF, with analytical support provided by Europol. Any third State or international organization can contribute data to be used in an AWF and may, under special conditions, be invited to be an associated member of an AWF. Contributions to the AWF have to be forwarded via the Europol National Units. Operational data accepted by an AWF can be shared only between the members of the AWF or the members of a specific target group.

The INTERPOL colour-coded notice system

INTERPOL has a colour-coded notice system which is used to inform all 187 member countries about a specific fact. The system can be a powerful law enforcement weapon as the notices are widely circulated and can be used to inform countries of individuals or methods involved in the smuggling of migrants. The details are as follows:

Colour of notice: *Information to be shared:*

Red	A request to seek the arrest or provisional arrest of a wanted person with a view to extraditing such a person based on an arrest warrant.
Blue	A request for additional information about a person's identity or illegal activities in relation to a criminal matter.

Colour of notice: *Information to be shared:*

Green	Warnings or criminal intelligence about persons who have committed criminal offences and are likely to repeat those crimes in other countries.
Yellow	A request for help to locate missing persons, especially minors, or to help identify persons who are not able to identify themselves.
Black	Request for information about unidentified bodies.
Orange	Warning to police, public entities and other international organizations of dangerous materials, criminal acts or events that pose a potential threat to public safety.

The INTERPOL orange notice provides for a quick diffusion of information about smuggling of migrants. For instance, if INTERPOL learned of a new modus operandi for smuggling of migrants, the General Secretariat would disseminate an orange notice to all countries informing them of what it had learned. In this way, police from all countries can always contribute to improving international capacity to fight smuggling. When information is diffused on an international basis, countries are empowered to combat smuggling networks.

INTERPOL Stolen and Lost Travel Documents Database

The INTERPOL Stolen and Lost Travel Documents Database (INTERPOL SLTD) is a powerful tool for detecting the smuggling of migrants. Borders and ports around the world can be directly linked to the database through a secure INTERPOL channel. Countries can also contribute data to the database when they become aware of lost or stolen passports or travel documents.

In July 2009, a man attempting to enter a country in Southern Africa was arrested at the airport after a check against the INTERPOL SLTD revealed that he was travelling on a passport that had been stolen in a West Asian country eight years previously. This country had registered the stolen passport in the INTERPOL SLTD, enabling front-line enforcers in the Southern African country to apprehend the man after running a direct check against the SLTD.

The database currently contains nearly 19 million entries, of which 10.5 million are passports, submitted by 145 countries.

Principal considerations when sharing information

When sharing information with or receiving it from another State

- Find out what procedures are in place in your State and follow them.
- Do not share information in a way that would breach your domestic legislation.
- Use information only in a way that complies with the sending State's wishes.

- Always look for opportunities to share information that may help stop or disrupt the smuggling of migrants in other jurisdictions.
- When communicating through INTERPOL, if you wish to ensure that direct contact is made with you, be sure to include your personal contact details so that you are quickly and easily reachable.

States that receive information are obliged to comply with any conditions placed on the use of information by the country that sent it.

For more on classification of information, see module 6.E.



Questions and exercises

- Does your country use a system of information-sharing with respect to the smuggling of migrants?
- Is your country a member of any regional information-sharing networks?
- *Scenario 1.* You receive a phone call from a law enforcer of Anyland requesting information about a smuggling network that smuggles migrants from and through your country, often using techniques that endanger the lives of migrants.
- *Scenario 2.* You are tracking a migrant smuggling network that smuggles people from your country into Anyland, often endangering the lives of migrants. You would like information about this group from Anyland.

What do you do?

Whom do you contact?

Are permissions needed?

What are the risks of cooperating in these situations?

How do you minimize risks?

Why should you cooperate with Anyland?

Why should you not cooperate with Anyland?

What arrangements must be entered into before cooperation with Anyland can proceed?

I. Joint investigation teams

Principal considerations when establishing joint investigations

Article 19 of the United Nations Convention against Transnational Organized Crime, joint investigations

“States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.”

There are some key points to keep in mind when planning joint investigations, namely:

- You need not have in place large-scale multilateral agreements or investigative teams in order to conduct joint investigations.
- If you have no previous experience of joint investigations, consider running one on a case-by-case basis. This is allowed by the Organized Crime Convention and may be a basis for a more formal bilateral or multilateral agreement in future.
- Always ensure that the relevant authorities are involved in developing agreements or agreeing to the conduct of case-by-case joint investigations.

Highly informal and local joint investigation practices run the risk of causing problems for particular investigations and, possibly, between States. Always ensure that the relevant authorities within each participating State are aware of what is happening. It may be possible to formalize these joint investigations by referring to or relying on the Organized Crime Convention.

The means of establishing joint investigation teams operating between countries varies greatly. However, certain emerging practices or models of joint investigation have emerged around the globe.

Co-located and non-co-located joint investigation teams

Joint investigation teams can be co-located in either or both of the countries involved, while non-co-located virtual teams can conduct parallel investigations in close cooperation with each other. The decision on what type of joint investigation team is deployed will depend on the laws of the countries involved, the primary needs for having a joint investigation team, and the cost and resource implications. A joint investigation team does not need to be co-located if it has ready and open lines of communication.

Non-co-located

Non-co-located joint investigation teams are not physically in the same location.

This model encompasses parallel coordinated investigations operating from their respective jurisdictions with a common goal, assisted by a liaison officer network or through personal contacts and supplemented by formal mutual legal assistance requests aimed at obtaining evidence. The officials involved are non-co-located and are able to work jointly on the basis of long-standing cooperative practices and/or existing mutual legal assistance legislation. This depends on the nature of the legal system(s) involved.

Co-located

Co-located joint investigation teams work together in the same location.

This model comprises integrated joint investigation teams with officers from at least two jurisdictions.

- This structure can be further divided and characterized either as passive or as active. In this regard: An “integrated passive” team could, for example, involve the integration of a foreign law enforcement officer with officers from the host State in an advisory or consultancy role or in a supportive role based on the provision of technical assistance to the host State.
- An “integrated active” team would include officers from at least two jurisdictions with the ability to exercise operational powers under host State control in the territory or jurisdiction where the team is operating. The integrated active model could best be described as a specially created infrastructure enabling officials from at least two countries to work in one jurisdiction with at least some equivalent operational powers.

Integrated passive teams are usually co-located on the basis either of national legislation enabling an officer to be appointed or designated or of a technical assistance agreement. In the case of the integrated active team, officers may also be designated based on an existing agreement or national legislation.

Cooperation on a case-by-case basis

This third model of cooperation may be subsumed under the two models above. The cases concerned may be either reactive or proactive. In general, cooperation will be relatively limited but it will involve some mutual exchange of information and coordination of activities directed against a particular criminal group. A form of agreement that defines roles and responsibilities may already exist or be established; but, more commonly, cooperation will entail the use of existing mechanisms to exchange information. Establishing some form of agreement is the recommended approach.



Case study

EU-wide operation

A network responsible for recruiting illegal migrants and transporting them to various EU Member States was uncovered. The migrants had to pay between €2,000 and €20,000, depending on their means of transportation and the destination country. At the end of 2007, enough intelligence had been gathered to make operation planning possible. Parallel and mirror investigations aiming for a joint action day were planned with a view to dismantling as much of the organized criminal network as possible. The undertaking in question was referred to as operation XY. In advance of the operation XY action day (23 June 2008), an international coordination centre was set up and hosted by the Central Office for the Repression of Illegal Immigration and Employment of Foreigners without Residence Permits (OCRIEST) in Paris. The coordination centre was manned by staff from OCRIEST, as well as by Europol Liaison Officers from France, Germany, Italy, the Netherlands, Sweden and the United Kingdom, together with bilateral foreign liaison officers from Belgium, Greece, the Netherlands and Spain already stationed in France.

On the action day, Belgium, France, Germany, Greece, Ireland, the Netherlands, Norway, Sweden and the United Kingdom arrested a total of 77 persons and carried out numerous house searches over a period of 24 hours. In total, more than 1,300 EU law enforcement officers were involved, including 6 officers from Europol. Many different types of items were seized during the house searches, such as mobile phones, notebooks, computers and address books and directories. Operation XY resulted in 27 arrests in France, 13 in Sweden, 12 in Germany, 11 in Belgium, 7 in the United Kingdom, 3 in the Netherlands, 2 in Greece, 1 in Norway and 1 in Ireland. This joint action demonstrates what transnational law enforcement cooperation can achieve.

Practical guidance: establishment of joint investigation teams

In investigating cases of the smuggling of migrants, there is often a need to act quickly, owing to the fact that the operational information upon which a joint investigation can be based is of value only for a limited period. The relevant practical guidance can facilitate the process.

When considering the establishment of a joint investigation team:

- Identify contacts for the purposes of initiating discussions and making decisions on the establishment of joint investigations. There are instances where investigations have been found to be linked to other countries but no action can be taken to develop cooperation owing to lack of infrastructure and identifiable contacts within the other country.
- Aim to establish trust, preferably before the start of the joint investigation.
- Establish common goals for the joint investigation at the outset. Planning must be supported at the strategic, tactical and political levels.
- Ensure commitment at all levels so as to guarantee that assistance will continue to be available when the investigation develops into a prosecution.

- Consider the availability and sharing of resources at the outset, as these factors can determine the extent of the cooperation possible.
- Decide on the working language for the joint investigation.
- Negotiate and document your agreements.
- Reduce bureaucracy to the minimum level.



Example: joint investigation team

After a protocol for a specific case has been signed between the judicial authorities of two EU countries, teams of investigators from the two countries can be mixed. The processes that evolve and the information provided by the two parties can be integrated under the umbrella of a single case and have the same judicial value. Such a joint investigation team targeting an Asian network of migrant smugglers has been formed between France and Germany.



Questions and exercises

- What authorities are relevant in your country for facilitating joint investigations?
- Has your country been involved in the operations of any joint investigation teams?
In what ways was the joint investigation team successful?
In what ways could the joint investigation team have been more successful?
- What were the biggest challenges you encountered in establishing the joint investigation team?
- What were the biggest challenges you encountered during joint investigations?
- If your colleague asked you for advice on establishing a joint investigation team, what advice would you give?

J. Challenges of international cooperation

General challenges

There are several challenges associated with international cooperation in the smuggling of migrants and other criminal investigations. Both formal and informal law enforcement cooperation has been hampered by issues such as:

- Lack of trust
- Diversity of legal systems
- Diversity of law enforcement structures

- Misuse of or failure to use existing channels of international communication
- Non-existent or poorly established direct channels of communication between countries
- Diversity in approaches and priorities
- Resource-intensity of operations

The most important component of international cooperation is the role played by individuals. All the laws and policies that allow for international cooperation count for little if individuals do not cooperate with each other proactively and appropriately.

You might face a situation in which a country holding information that would be of great use to you is reluctant to share that information. This is often owing to concerns about the security of information. When seeking cooperation, an investigator must be mindful of these concerns. Having suitable methods in place to protect the information passed on may encourage a better flow of information.

Challenges of formal cooperation

The main advantage of well-developed formal cooperation is the acquisition of evidence that is admissible in court.

However, legal issues pose a significant challenge to formal cooperation, given that different laws and different legal systems are often involved. Often, the bureaucratic structure is significant and sometimes interferes with the timeliness of results.

It is unlikely that a formal letter of request will be appropriate in cases where a person's safety is at risk, given the significant amount of time that may be needed to achieve the desired result.

Challenges of informal cooperation

The fact that informal cooperation (direct officer-to-officer contact) often proceeds more rapidly than formal cooperation can have many benefits, particularly with respect to operations related to the smuggling of migrants, as it can yield prompt responses in situations that pose risks to people.

However, there are certain risks and challenges associated with this form of cooperation, such as:

- Exposure of law enforcers in other countries to risks if they cooperate with you
- Diplomatic incidents when action is not properly thought out
- Exposure of victims and others to increased risks through unwitting or deliberate leakage of information from the agency involved
- Increased risk of compromising other operations and law enforcement staff

Such risks can be minimized by:

- Prohibiting individual officer-to-officer contact if this is specifically forbidden by one of the jurisdictions concerned
- Determining what arrangements for cooperation exist between your countries. Where liaison officers or units exist, their advice should be sought

- Never passing on information that may expose someone to danger without first establishing the risks involved in contacting a particular unit or
- Keeping liaison units informed of what you are doing

It may be difficult to assess the level and impact of the risk at a distance. Where possible, speak to liaison departments and officers in order to identify whom you can contact safely.

For more on risk assessment see annex II and module 5 of the *UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners*, available at <http://www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html>



Questions and exercises

- Have you had any experience of formal cooperation in investigations into the smuggling of migrants? Write a short case study based on your experience. On a separate page, list the challenges involved and the methods utilized to address them.
- Are there liaison units or officers in your country that can facilitate formal international cooperation?
 - If so, how do you contact them?
 - If not, whom would you contact in the event that you needed to seek cooperation with another country?
 - If you do not know the answer, how would you find out?

K. Concluding remarks

It is often the case that international cooperation is often difficult to achieve and may be viewed as an area fraught with challenges. Nonetheless, in investigations into the smuggling of migrants, effective international cooperation can often be the key to a successful prosecution and is usually essential for the complete disruption of an organized criminal group.

International cooperation can be either formal or informal. There are benefits and risks associated with both types of cooperation and neither should be entered into before full consideration has been given to which would be the most appropriate means of achieving clear criminal justice objectives.

As was seen earlier, the results are excellent in cases where international cooperation has been achieved. While lawmakers and policymakers have key roles to play in the process of bringing about effective cooperation, the role of investigators is also vital. Clearly identifying your objectives in seeking a particular form of assistance, and responding with timeliness and in good faith to the requests made, will help strengthen the criminal justice response of all parties concerned.



Self-assessment questions

- What types of international cooperation are supported by the Organized Crime Convention?
- What is the difference between formal and informal cooperation?
- What are the pros and cons of formal cooperation?
- What are the pros and cons of informal cooperation?
- Who is responsible in your country for making a request for extradition or mutual legal assistance?
- What is the basis for establishing a joint investigation team?
- What are the possible challenges posed by international cooperation?
- How can the risks associated with international cooperation be minimized?



UNODC

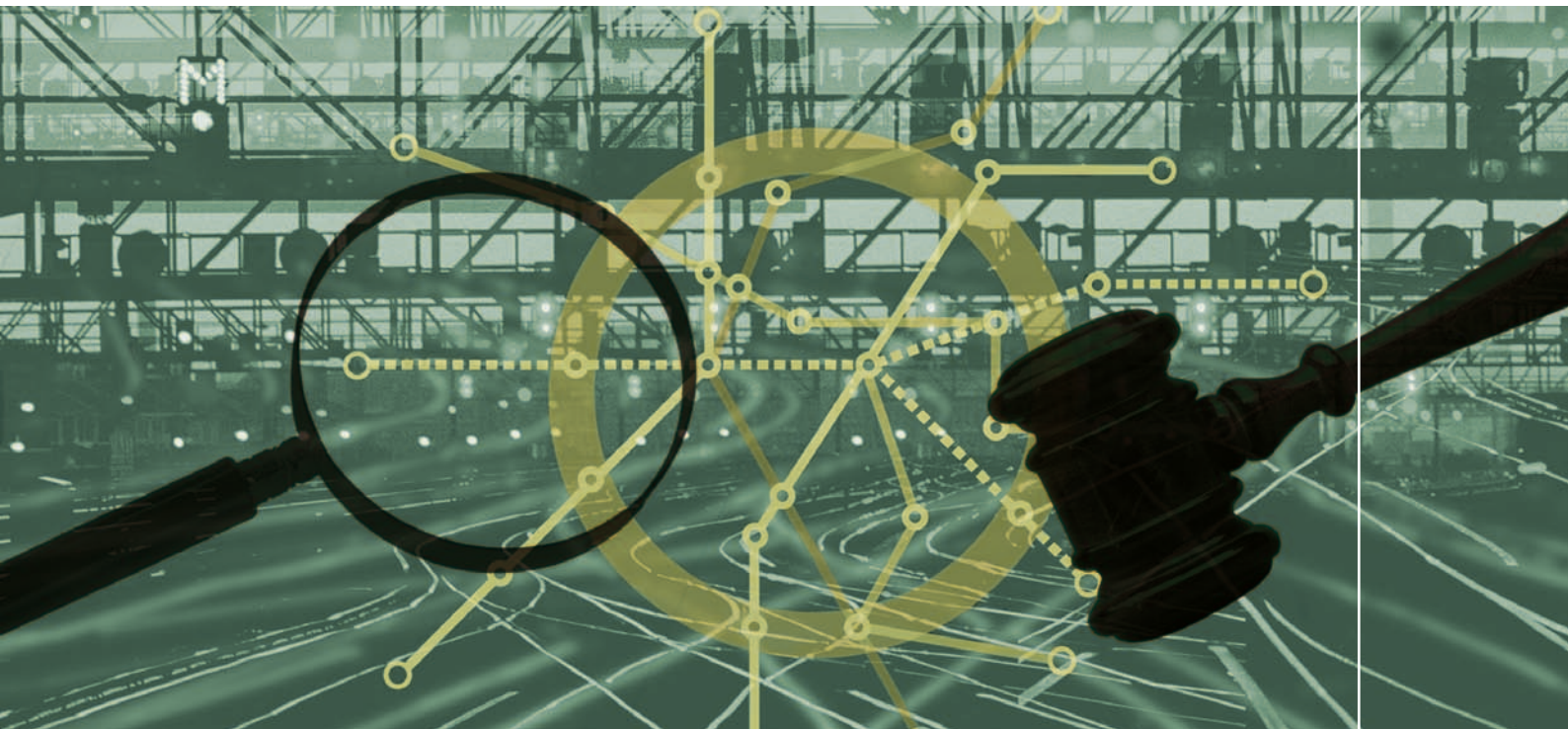
United Nations Office on Drugs and Crime

Vienna International Centre, PO Box 500, 1400 Vienna, Austria
Tel.: (+43-1) 26060-0, Fax: (+43-1) 26060-5866, www.unodc.org



UNODC

United Nations Office on Drugs and Crime



Basic training manual on investigating and prosecuting the smuggling of migrants

Module 9
Human rights



This publication is made possible through funding received from the European Union.

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Basic training manual on investigating and prosecuting the smuggling of migrants

Module 9:
Human rights



UNITED NATIONS
New York, 2010

© United Nations Office on Drugs and Crime, May 2010.

The description and classification of countries and territories in this study and the arrangement of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic system or degree of development.

Publishing production: UNOV/DM/CMS/EPLS/Electronic Publishing Unit.

Module 9. Human rights

A. Learning objectives

The present module examines selected human rights issues that should be considered when investigating and prosecuting the smuggling of migrants. At the end of this module, you should understand:

- Which human rights are relevant in investigations into the smuggling of migrants
- The human rights of smuggled migrants
- The human rights of suspected smugglers of migrants
- The principles relating to the protection of refugees
- The nature of your role is in protecting and promoting human rights
- How human rights can be legally limited temporarily

B. Human rights and law enforcement

Law enforcers constitute the first line of defence in protecting human rights. They uphold the law, including human rights law. However, they are sometimes in situations that require them to infringe on human rights and balance competing considerations. In its resolution 34/169, the General Assembly adopted a Code of Conduct for Law Enforcement Officials.¹

All investigations, including interviewing of witnesses, victims and suspects, personal searches, searches of vehicles and premises, interception of communications:

- Shall not be unlawful, arbitrary, unduly intrusive or biased
- Shall be competent, thorough, prompt and impartial and lawful
- Shall include careful processing of crime scenes
- Shall seek to collect and preserve evidence

Such principles are laid out in codes of conduct such as that below.

Code of Conduct for Law Enforcement Officials

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

¹ See General Assembly resolution 34/169 available from www.unhchr.org.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Non-discrimination

It is a fundamental principle of international human rights law that all persons have a right to be recognized as a person before the law, are to be treated as equal before the law and are entitled without any discrimination to equal protection of the law.

Law enforcers shall not unlawfully discriminate on the basis of race, gender, religion, language, colour, political opinion, national origin, property, birth or other status.

The fact that everybody is equal before the law does not mean, however, that everybody is identical. Hence, it is not considered to be discriminatory for a law enforcer to apply certain special

measures designed to address the special status and needs of women (including pregnant woman and nursing mothers), juveniles, the sick, the elderly, people with special needs and others requiring special treatment in accordance with international human rights standards.



Remember: human rights are always relevant throughout the process of investigating smuggling of migrants and any other crime.



Questions and exercises

- Mr. Officer must detain four smuggled migrants overnight at the border office before they are relocated the following day. Three of the smuggled migrants are men and one of them is a woman. There are two rooms at the border office. Mr. Officer puts the three men in one room and the woman in the other room. Is this discriminatory? Why or why not?
- Do you have a code of conduct or disciplinary code in your country? How does it compare with the United Nations Code of Conduct for Law Enforcement Officials?
- How could the above Code of Conduct be tailored to the needs of law enforcers specifically working in the area of smuggling of migrants?
- Do codes of conduct still need to be abided by when one is dealing with non-nationals?

C. Human rights of smuggled migrants

General principles

Regardless of their immigration status, smuggled migrants have the right to expect that their human rights and dignity will be upheld and prioritized at all stages by those who intercept and identify them, those who detain them, those who remove them from the country and, where relevant, those who grant them asylum.

While States can detain and remove irregular migrants in certain circumstances and on certain conditions (assuming they are not found to be refugees or are protected from removal by other human rights such as those derived from the prohibition of torture or cruel, inhuman or degrading treatment or punishment), they also have a responsibility to do so using measures that demonstrate respect for human rights and the safety and dignity of the migrants concerned.

Police also have a role to play in the prevention of migrant smuggling by protecting the human rights of nationals and thereby reducing the discontents at the root of the desire to leave.

Smuggling of Migrants Protocol, article 16 (Protection and assistance measures)

1. In implementing this Protocol, each State party shall take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in article 6 of this Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.
2. Each State party shall take appropriate measures to afford migrants appropriate protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of conduct set forth in article 6 of this Protocol.
3. Each State party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of conduct set forth in article 6 of this Protocol.
4. In applying the provisions of this article, States parties shall take into account the special needs of women and children.
5. In the case of the detention of a person who has been the object of conduct set forth in article 6 of this Protocol, each State party shall comply with its obligations under the Vienna Convention on Consular Relations,^a where applicable, including that of informing the person concerned without delay about the provisions concerning notification to and communication with consular officers.

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



Remember, smuggled migrants may be victims of human rights abuse during the smuggling process.

Rights of smuggled migrants who are victims of crime

Law enforcers who are likely to encounter victims of crime should do the following:

- Respond promptly, especially to complaints of violence.
- Inform victims of the assistance (legal, material, medical, psychological and social) that is available to them.
- Investigate, report and follow up thoroughly and professionally.
- Keep a roster of contacts handy, with all the relevant information on services available to assist victims.

- Establish close cooperative procedures with medical, social, legal and other victim assistance providers.
- Endeavour to ensure that a female officer is present during all contact with female victims of crime, especially violence.
- Explain to victims their rights, their role in legal proceedings, and the nature of legal proceedings.
- Provide transportation to a safe place and to medical services or arrange for providers of medical services to travel to the victim.
- Keep records secure and carefully protect confidentiality of victims.
- Establish victim assistance guidelines to ensure prompt, proper and comprehensive attention to the legal, material, medical, psychological and social assistance needs of victims.

Rights of smuggled migrants who are refugees or asylum-seekers

Everyone has the right to seek and to enjoy, in another country, asylum from persecution.

Refugees and asylum-seekers sometimes use the services of smugglers of migrants.

The illegal entry of a person is not to affect negatively their claim to asylum and the Smuggling of Migrants Protocol is not to be read in such a way as to be discriminatory with respect to the smuggled migrants (article 19).

Article 1 of the 1951 Convention relating to the Status of Refugees,² defines a refugee as any person who, “owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

Simply put, a refugee is a person who, owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership of a particular social group, or political opinion or political reasons, including conflict and war, is unable or unwilling to return to his or her country of origin (or, if stateless, to his or her country of habitual residence).

An asylum-seeker is a person seeking admission to a country as a refugee and awaiting a decision on his or her application for refugee status under relevant international and national instruments. In the case of a negative decision, he or she must leave the country or may be expelled, as may any alien in an irregular situation, unless permission to stay is granted on humanitarian or other related grounds.

Each country should have a dedicated entity for processing asylum claims and administering refugee issues.

² United Nations, *Treaty Series*, vol. 189, No. 2545.

Principle of non-refoulement

A key consideration to keep in mind when investigating or prosecuting a case of the smuggling of migrants is the principle of non-refoulement.

According to the principle of non-refoulement, a State cannot send a person back to a country where his or her life is in peril when there are substantial grounds for believing that he or she would be in danger of being subject to other elementary human rights violations (such as torture or cruel, inhuman or degrading treatment or punishment). In respect of this principle, States are also obligated to examine whether such a risk could be posed to the migrant through “chain deportation” (that is, his or her further deportation to State or States different from that to which they have been sent).

The principle of non-refoulement is laid down in the 1951 Convention and other human rights instruments. According to the 1951 Convention:

“No Contracting State shall expel or return (‘refouler’) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (article 33, para. 1).

However, the benefit of this principle cannot be “claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country” (article 33, para. 2).

Article 19 of the Smuggling of Migrants Protocol states that the Protocol shall not affect any other rights, obligations or responsibilities of States and individuals under international law, including humanitarian, human rights and refugee laws. This means that the illegal entry of a person is not to negatively affect his or her claim for asylum and the Protocol is not to be read in a way that is discriminatory to the smuggled migrant.

It must be remembered that, while some smuggled migrants make legitimate asylum claims and are correctly accorded the status of refugees, this does not make the actions of the smugglers of migrants any less criminal when they are smuggling the migrants for their own financial gain. In fact, their taking financial advantage of persons who are in vulnerable positions could be considered an aggravating circumstance.

More information about aggravating circumstances is contained in module 7.



Regardless of whether a person is a refugee or a migrant, a citizen or a non-citizen, whether he or she is fleeing persecution, armed conflict, threats to his or her life or abject poverty, that person is entitled to have his or her human rights upheld and to be assured that his or her treatment adheres to certain standards.

Repatriation considerations

Because of the principle of non-refoulement, a refugee cannot be repatriated.

If an asylum-seeker's claim for refugee status is unsuccessful, he or she may be expelled, as an alien is, unless he or she is granted permission to stay on humanitarian or other related grounds.

Countries seeking to repatriate a person to another country should also be mindful of other human rights considerations. For instance, repatriation of a migrant to a safe country, which may in turn repatriate the migrant to a non-safe country, could ultimately amount to a breach of the migrant's human rights. As mentioned above, this action, known as chain deportation, is prohibited by the principle of non-refoulement.

Smuggling of Migrants Protocol, article 18 (Return of smuggled migrants)

1. Each State party agrees to facilitate and accept, without undue or unreasonable delay, the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who is its national or who has the right of permanent residence in its territory at the time of return.
2. Each State party shall consider the possibility of facilitating and accepting the return of a person who has been the object of conduct set forth in article 6 of this Protocol and who had the right of permanent residence in its territory at the time of entry into the receiving State in accordance with its domestic law.
3. At the request of the receiving State party, a requested State party shall, without undue or unreasonable delay, verify whether a person who has been the object of conduct set forth in article 6 of this Protocol is its national or has the right of permanent residence in its territory.
4. In order to facilitate the return of a person who has been the object of conduct set forth in article 6 of this Protocol and is without proper documentation, the State party of which that person is a national or in which he or she has the right of permanent residence shall agree to issue, at the request of the receiving State party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.
5. Each State party involved with the return of a person who has been the object of conduct set forth in article 6 of this Protocol shall take all appropriate measures to carry out the return in an orderly manner and with due regard for the safety and dignity of the person.
6. States parties may cooperate with relevant international organizations in the implementation of this article.

7. This article shall be without prejudice to any right afforded to persons who have been the object of conduct set forth in article 6 of this Protocol by any domestic law of the receiving State party.

8. This article shall not affect the obligations entered into under any other applicable treaty, bilateral or multilateral, or any other applicable operational agreement or arrangement that governs, in whole or in part, the return of persons who have been the object of conduct set forth in article 6 of this Protocol.

Considerations where minors and other people with special needs are involved

Children are often the object of migrant smuggling activity and may be smuggled with adult migrants, who are less likely to be deported in cases where the children are claimed to be their own.

In the event that minors or other people with special needs are discovered, officers must act in accordance with the local laws and policies. At an absolute minimum, minors should:

- Be removed, immediately, from the source of any danger
- Not be allowed further contact with any suspects
- Be seen by a medical professional (for health issues but also for possible evidential issues)
- Be provided with additional clothing or nappy changes (if required), fed, given refreshments and if old enough, given at least a pencil and paper to provide them with something to do
- Be dealt with thereafter by trained officers

When there is some doubt about whether or not a person is a child and the person's age cannot be verified, the best practice is to assume that he or she is a child.



When children are involved in smuggling situations, law enforcers should be mindful of the obligations set out in the Convention on the Rights of the Child,³ available at <http://www2.ohchr.org/english/law/crc.htm>.

Similar actions should be taken with regard to any special needs. This could include the provision of interpreters, signers (those who speak in sign language) and medical assistance.



When people with special needs are involved in smuggling situations, law enforcers should be mindful of the obligations set out in the Convention on the Rights of Persons with Disabilities,⁴ available at: <http://www.un.org/disabilities/default.asp?id=150>.

³ Ibid., vol. 1577, No. 27531.

⁴ General Assembly resolution 61/106, annex 1.

Inasmuch as your local policies and/or laws may require these different categories of migrants to be dealt with differently, they should be identified as early as possible. However, it may often be the case that decisions cannot be taken at the very first encounter. Partners such as the Office of the United Nations High Commissioner for Refugees and the United Nations Children's Fund should also be engaged as soon as practicable.

Care must also be taken to identify trafficking victims among smugglers of migrants. Trafficking victims are victims of crime (see above for more information on the rights of smuggled migrants who are victims of crime).⁵



Questions and exercises

- How would you further tailor the list of rights mentioned above to situations involving the smuggling of migrants in your local context? What items would you add to the list?
- Respond to the following checklist with reference to your local context:
 - What assistance is available to smuggled migrants who are victims of crime?
 - Do you have a roster of contacts? Who is on this list?
 - What are victims' rights at the point when you first come into contact with them?
 - Do you have the facilities necessary to transport victims to service providers or arrange for service providers to come to victims?
 - What records do you keep of victims? How do you protect their confidentiality?
 - What procedures for cooperation with assistance providers are in place?
 - Are victim assistance guidelines in place? What are they?
 - How would you find the answer to those questions you could not respond to?
- Based on your responses to the above checklist, formulate 10 clear points that law enforcers could post on their wall as a quick reference when placed in situations where they encounter migrants.
- What is the difference between a refugee and an asylum-seeker?
- What does non-refoulement mean?
- What is the process in your country for determining whether the principle of non-refoulement applies to a particular person?
- In your country, what happens to a person who cannot be returned to his or her country of nationality or permanent residence for reasons of non-refoulement?
- In cases where the principle of non-refoulement does not apply, how is a person returned to his or her country of nationality or permanent residence?

⁵ For in-depth information about responding to situations of trafficking in persons, see the *UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners*, available at <http://www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html>

- Who are the people and what are the units, agencies and organizations in your country relevant to situations where a smuggled migrant claims asylum? How do you contact them?
- Who are the people and what are the units, agencies and organizations in your country relevant to situations where a person is to be returned from or to your country?

D. Human rights of (suspected) smugglers of migrants

Rights of suspected smugglers of migrants upon arrest

Every person who is arrested has certain rights that apply immediately upon arrest and after arrest. This places an obligation on police officers to respect and protect the basic rights of people who are arrested, namely:

- The right to liberty or freedom and security of persons and to freedom of movement.
Under the principle of legality, a person can be arrested only on legal grounds. Arrest without legal grounds amounts to arbitrary detention.
- The right to be treated with dignity and respect.
For instance, swearing or using abusive language during arrest may infringe on a person's dignity.
- The right to be informed of the reasons for arrest, at the time of arrest.
- The right to remain silent (related to the right to not incriminate oneself).
Arrested persons should not be compelled to confess or testify against themselves. This right does not include the provision that a person should not supply basic details about him- or herself (such as name and address).
- The right to be promptly informed of the charges against him- or herself.
- The right to be informed of one's rights.
- The right to be presumed innocent until proved guilty.
- The right to be brought to a place of custody.
- The right to have access to a lawyer.
- The right to be brought promptly before a judge or other officer authorized by law.
- The right not to be tortured or treated in a cruel, inhuman or degrading way.
- The right to a fair trial within a reasonable time.
- The right to notify family members and other appropriate persons about detention.
- The right to legal assistance and to communicate with legal representative.
- The right for women to be segregated from men and children from adults who are not their parents, when practicable.

Duties of law enforcers when carrying out arrest

- To inform the suspect of his or her rights.
- To keep a record of relevant data.
- To ensure that the arrest record shall be communicated to the detainee or his or her legal counsel.
- To ensure that, where necessary, an interpreter shall be provided during the interview.

Conditions of detention

- Persons should be detained only in officially recognized places of detention.
- Detainees should be kept in facilities that are as humane as possible and designed to accommodate human beings, and should be provided with adequate food, water, shelter, clothing, medical services, exercise and items of personal hygiene.
- Women must be separated from men, and children from adults.
- Detained persons should be allowed to inform their family of detention, and should be given reasonably satisfactory facilities for communicating with their legal representatives.
- Religious and moral beliefs of detainees shall be respected.
- Persons arrested or detained without charge shall be accorded the same protection and facilities as pretrial prisoners and those awaiting trial.



For more information about administering justice in situations where suspected smugglers of migrants are detained, please refer to the United Nations Standard Minimum Rules for the Treatment of Prisoners⁶ available at <http://www2.ohchr.org/english/law/treatmentprisoners.htm>.

Vienna Convention on Consular Relations

In the case where foreign nationals are arrested or detained, article 36 of the Vienna Convention on Consular Relations, 1963,^a provides that, if requested, the authorities of the receiving State must notify the consulate of the sending State without delay that its national has been deprived of his or her liberty. Any communication shall be facilitated and consular access to the detainee shall be granted.

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

⁶ *Human Rights: A Compilation of International Instruments*, Volume 1 (First Part): *Universal Instruments* (United Nations publication, Sales No. E.02.XIV.4) (vol. 1, Part 1), Sect. J, No. 34.



Questions and exercises

- Do you believe that the rights of smugglers of migrants and the duties of law enforcers listed above are appropriate? Would you modify any of those rights or duties? Would you include any others?
- Are the standards of arrest and detention mentioned above practicable in your local context?
- What data do you think should be recorded upon arrest? Design a questionnaire to be filled out by law enforcers upon the arrest of suspected smugglers of migrants.
- In your country, which authority can “prove guilt” of a suspected smuggler of migrants?
- Explanations and/or examples have been provided for some of the above-mentioned rights. Offer explanations and/or examples for the others.
- Are the standards for the conditions of detention listed above practicable in your local context?
- What is the difference between a detained person and a prisoner?
- In your local context, what are the challenges in meeting basic minimum standards of human rights for both smuggled migrants and smugglers of migrants?
- In addition to the rights of smuggled migrants and smugglers of migrants, the rights of which other persons are to be considered in investigations into the smuggling of migrants?

E. Limiting human rights

In the course of investigations and operations dealing with the smuggling of migrants, you may be in a situation where human rights need to be limited. Certain human rights can be limited only lawfully, that is, they can never be limited without legal justification.

Other human rights can never be derogated from under any circumstances, even in a state of emergency. For derogations to apply, the state of emergency must pose a threat to the life of the nation and the State must have officially declared the state of emergency. Measures that derogate from human rights standards must be officially notified to other States through the competent international organization. Furthermore, derogations are permissible only to the extent strictly required by the situation and only for as long as the state of emergency is in place. Even when these conditions are fulfilled, there are certain rights that can never be derogated from. Such rights are called non-derogable.

Examples of rights that can never be derogated from (non-derogable rights) include:

- Right not to be subject to torture, or cruel, inhuman or degrading treatment or punishment
- Right not to be held in slavery or servitude
- Right to equality before the law
- Right to be presumed innocent until proved guilty

Examples of rights that can be temporarily limited under certain conditions include:

- Right not to be deprived of liberty
- Freedom of movement
- Freedom of religion
- Freedom of expression
- Right of peaceful assembly
- Freedom of association



Examples: limitations

A police officer uses force against a smuggler of migrants who threatens him physically or resists arrest.

Another example of a limitation with respect to the smuggling of migrants may be the temporary administrative detention of smuggled migrants on certain grounds.

Human rights can be limited only to a certain extent. For example, using force to arrest an unarmed smuggler who does not resist arrest would be excessive, as would the detention of smuggled migrants in inhumane conditions or for too long. The excessive limitation of rights becomes a breach of human rights.

The following (P.L.A.N) principles can be regarded as a means of checking whether rights are limited lawfully:

- Proportionality:** Any limitation to rights should be proportionate to whatever objective is legally being sought.
- Legality:** Any action to limit rights should be justifiable by a valid law.
- Accountability:** Review systems and reporting procedures should be in place to account for any limitation of rights.
- Necessity:** Where other measures are inadequate, rights should be limited only to the extent necessary.



To the above principles should be added the following: all limitations of human rights must be non-discriminatory.



Questions and exercises

- Can you think of any cases where rights may need to be limited in investigations into the smuggling of migrants? Whose rights would they be?
- Have you had an experience where rights were limited in the course of an investigation into the smuggling of migrants?

In the situation you described, were the limitations:

- Proportionate?
- Legal?
- Accountable?
- Necessary?

Was there a process for reporting the temporary limitation of human rights?

- In your country, what consequences must a law enforcer face when he or she breaches the human rights of a migrant or smuggler?
- You are a border official who has just intercepted five smuggled migrants: three are men, one is a male child and one is a woman. You have arranged for transportation to a facility where they can be properly cared for and debriefed, but they must stay at the border post overnight. You have two rooms equipped for sleeping. One is the room you sleep in, with a sink with running water; the other room contains one bed. Both rooms can be locked from the outside.

How do you accommodate the five migrants? Give reasons for your answer.

F. Concluding remarks

Every person, regardless of his or her nationality, residence or other status, has human rights. Law enforcers are in a particularly important position with respect to human rights: they are charged with the responsibility of protecting the rights of others, yet sometimes, when there are competing interests involved, they may have to temporarily limit those rights.

This requires that law enforcers perform a careful balancing act, ensuring that human rights are limited only to the extent that such limitation is proportionate, legal, accountable and necessary.

Some rights, however, can never be limited under any circumstances and any attempt to limit them would constitute a breach of human rights.

Where human rights are breached, not only does this represent a human tragedy and crime against international and domestic law, but it may also potentially undermine investigations and prosecutions in relation to the smuggling of migrants.



Self-assessment questions

- What are human rights? Why are they important?
- What is the source of human rights?
- Name some human rights that are relevant to your work in investigating the smuggling of migrants.
- Why is the United Nations Code of Conduct for Law Enforcement Officials important for police officers?
- What is a refugee? What is an asylum-seeker?
- What is the principle of non-refoulement?
- Name some of the considerations to be taken into account when dealing with people with special needs.
- What are the rights of a person upon his or her arrest?
- Provide three examples of duties of law enforcers towards arrested persons.
- What does it mean to limit human rights?
- Under what circumstances can human rights be limited?
- To what extent can human rights be limited?
- Explain the P.L.A.N. principles and their use.



UNODC

United Nations Office on Drugs and Crime

Vienna International Centre, PO Box 500, 1400 Vienna, Austria
Tel.: (+43-1) 26060-0, Fax: (+43-1) 26060-5866, www.unodc.org



UNODC

United Nations Office on Drugs and Crime



Basic training manual on investigating and prosecuting the smuggling of migrants

Annexes
Glossary



This publication is made possible through funding received from the European Union.

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Basic training manual on investigating and prosecuting the smuggling of migrants

Annexes
Glossary



UNITED NATIONS
New York, 2010

© United Nations Office on Drugs and Crime, May 2010.

The description and classification of countries and territories in this study and the arrangement of the material do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries, or regarding its economic system or degree of development.

Publishing production: UNOV/DM/CMS/EPLS/Electronic Publishing Unit.

Annex I. Witness statement

The following is a fictionalized witness statement. All names and places have been changed to protect the identity of the persons concerned.

Statement of: Mr. Smuggled Migrant (Mr. M)

Age: Over 18

Occupation: Mechanic

This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it that I know to be false, or do not believe to be true.

My name is Smuggled Migrant. I am from Homeland in Asia, where I have lived all my life. My parents got divorced when I was 2 or 3 years old. I lived with my Mum afterwards. My Mum passed away when I was 13. I have lived by myself since then.

I heard my father (Mr. M Senior) was now in Anyland in Europe. At the beginning of 2006, I started thinking about coming to Anyland. First, I wanted to come to look for my father; second, I wished to have a better life. This statement describes how I came to Anyland.

In July 2006, my friend (Mr. F) introduced me to a Mr. Y (he is about 30 years old). Mr. Y asked me if I wanted to come to Anyland. I said yes, so he told me I could fly from Homeland to Anyland in a week. He said it would cost me about £21,000. He took my ID to do the passport, he said. One or two months later, I paid him the £21,000. My Uncle, Mr. G, helped me get the money together: half of the money came from selling the house and land belonging to my Mum and the other half was borrowed from the people in the village, again with the help of my Uncle. I promised I would pay them back after I had come to Anyland.

In the middle of October, Mr. Y collected me in a car and we drove for a long time until we arrived at a port. Mr. Y told me to get on a boat. It was a small boat and didn't have a ladder or staircase. He told me to hide in the hull of the boat; it had three or four other people from Homeland at the bottom of the boat. I was hidden in the boat for about 10 days. When we arrived in another country, Mr. Y told me it was Anotherland. A car then took us to a house; I asked Mr. Y why aren't we flying? He told me to be quiet and not ask too many questions; just wait there. Then he left.

I stayed in that house for about one or two months. In the meantime, they gave me bread, water and clothes. One day Mr. Y came back and told me we were leaving that night. We took a car to the port and got on a boat; again, I was hiding under the boat, I couldn't see the sun and it felt like a very long time. After about 10 days (I think), we landed and I was hidden in the back of a truck. Mr. Y was in the front and we drove for about one day. Then we got on another boat. I guess it was for about 20 days that we were on that boat. We arrived at a place that I guessed

was in Africa. I think there are only four different skin colours in the world (white, black, yellow and brown) and the people were black.

I then stayed in a house for about two months. Mr. Y came and went in the meantime. There were three other people in the house and no one could speak my language. I saw Mr. Y about two or three times during that whole time. Then he came and took me to a bus; there were local people on the bus and the bus drove for about two to three hours. When we got off the bus, we started to walk. We walked for about 10 days, up and down the mountains. We passed one or two villages along the way. We all carried our own rucksack, which had food, water and a blanket. Most of the time we slept in the open air. Then we arrived at a house; only Mr. Y and I stayed in the house. Some local people gave us water and food or sometimes Mr. Y went out and came back with food. We stayed there for about one or two weeks.

After we left the house, we took a car to go to a boat. It was about a one-day journey in the car. When we got to the boat, I again had to hide under the deck of the boat. There were another three people with me. I guess Mr. Y was on top of the boat. I am not sure what the other three looked like. I can describe them only as follows: one was a black person and the other two persons had brown-coloured skin. We were hiding under the boat for 10 days, and then we arrived in Europe. I knew it was Europe because the people there looked like white people. I went on a truck, hiding in the back of it. It was all sealed up. I couldn't see outside. It was about 10 hours on the truck. After that, we went on to hide on a train. It was a cargo train and Mr. Y and I were hiding in a container. We stayed on the train for a few hours, and then we changed to a car. The driver was white. They took me to a house and I stayed there for one or two months. People came and went in the meantime, none were from Asia, and their skin colours were black or brown. Someone with brown skin would give me food and water.

One day another man who also looked like he had brown skin — he had shoulder-length hair, which curved out at the end — came and passed me a mobile phone. I talked to Mr. Y on the phone and he told me to go with that man today and he would take me to Anyland. That was the last conversation I had with Mr. Y.

It was about 6 or 7 a.m.; I got in a car, which was blue in colour. It didn't look very new. We drove for about 10 hours and I sat in the back seat. Until the end of the journey, I felt like the car was driving around in circles waiting for a time. At around 7 or 8 p.m., it was dark; we drove to a petrol station where there were lots of lorries parked at the side. The driver pointed to a lorry that had English letters written on it, starting with "B". This lorry was the one I got arrested in.

I ran across to the lorry and climbed onto the driver's seat. The driver was in it and he told me to hide behind the driver's seat in the sleeping cab. I would describe the driver as having brown-coloured skin with short hair. Because it was dark and there was no light on in the lorry, I couldn't see properly what he looked like. I knew that apart from the driver and me, there were another two persons in the sleeping cab. We drove and stopped a few times, I knew the driver went out and back because I could feel his chair moving up and down.

Halfway through the journey, I felt someone else come in, because he brushed over me.

I will describe this last journey as the worst part of the whole journey. This was because I couldn't breathe; it felt like I was suffocating. There was something heavy on top of me, I couldn't turn around. I was also next to the stereo, and the music was very loud, so I could not hear anything.

When we stopped still for the two hours before we got arrested, I now know we were on a ferry. I felt the lorry starting to move again for a short while, then I heard the driver talking to someone, then he started to drive again, and then we stopped again and the police found us.

After I got off the lorry, I realized there were actually four people including me in there. The man standing next to me told me we were in Anyland now; that's how I knew here is Anyland.

I felt the whole journey from Homeland to Anyland was "bitter"; very tiring and extremely hard. I feel lucky I am still alive. I would not wish to do this for a second time, I believe there won't be a second time anyway as I have no money left.

Annex II. Planning and strategizing

A. Setting objectives

Investigations into the smuggling of migrants are, in general terms, no different from any other types of criminal investigation. They should be approached as such, from the outset. As in any type of investigation, someone needs to be appointed as the team leader. This applies equally to those legal systems where police act totally independently of the prosecutor, and those systems where judges or magistrates play a key part in investigations. The team leader is responsible for setting the operational objectives and for putting in place strategies to support the achievement of the objectives.

Purpose and nature of objectives

Objectives should be set for all investigations and operations in order that:

- (a) The team leader's supervisors (or prosecutor) may know what is being done and why;
- (b) The operational team may understand why they are carrying out particular duties.

Operational objectives must be achievable by the investigation team and may also need to link up with overarching strategies put in place through direct judicial involvement or, in many cases, by political will. For objectives to be effective they need to be specific, measurable, realistic, time-bound, and capable of being evaluated and reviewed periodically.

The actual objectives to be set for an investigation into the smuggling of migrants largely depend upon what is envisaged when the investigation commences. Obviously, an operation that seeks only to disrupt a criminal enterprise will have very different objectives from one that seeks the conviction of criminals. Below is a list of some key objectives frequently governing investigations into the smuggling of migrants, which do not appear in any particular order and are not mutually exclusive:

- Prosecution of persons involved
- Disruption
- Enhancement of intelligence
- Minimization of risk to those smuggled and officers involved
- Target hardening
- Financial investigations.

In setting objectives, you must consider what is possible within your system.

Defining objectives

The approach detailed below, which is in wide use and bears the acronym SMARTER, may assist you in formulating objectives. SMARTER encompasses the following features:

Specific	About what you need to achieve (linked to the operation)	You wish to arrest a proved smuggler, Mr. B.
Measurable	In terms of quality, quantity, financial and time limits and any interim deadlines	You lawfully enter premises where Mr. B is to be found and arrest him
Achievable	An objective must be achievable, even if it poses challenges	Do you know where Mr. B is?
Realistic	In terms of the resources available and factors within your control	Can you locate Mr. B?
Time-limited	To be completed by a certain date or within a defined review period	Mr. B is due to leave the country in one week. Can you arrest him before then?
Evaluated	Carry out an assessment to determine whether they have been achieved. Either you, a senior officer, colleague or outside agency can conduct the assessment	Does a senior officer oversee this process to ensure that the arrest has been carried out lawfully?
Reviewed	At any time during or at the end of an investigation. For example a review could be conducted at the end to identify best practices and any lessons that have been learned	Prosecuting authority or magistrate would review the process.

Examples of objectives

Below are five examples of SMARTER objectives, which relate to the above.

Prosecution objective

Objective: to establish the guilt, or otherwise, of X and to prosecute him accordingly for being involved in the smuggling of migrants or any other offences that are identified (Specific)

- For such evidence to be collected that is sufficient to support a prosecution, with a realistic prospect of conviction, as expediently as possible from the commencement of this operation, in a way that adheres to all constitutional and human rights provisions (Measurable, Achievable, Realistic)
- There will be reviews of the investigation by a senior officer twice a month to ensure that this objective remains achievable and realistic (Time-limited, Evaluated)
- At the end of the operation (or within a set time frame), investigators and prosecutors will meet to review the evidence and decide upon any further course of action (Reviewed)

Intelligence objective

Objective: to receive and act upon tactical intelligence in a timely manner so as to enable this operation to be intelligence-led (Specific)

- Intelligence must be collated and entered within the designated system within 12 hours of receipt (or as expeditiously as possible, taking into account weekends, holidays and other considerations relating to the specific operation), unless identified as operationally urgent (Measurable, Achievable, Realistic, Time-limited)
- The handling of the intelligence is to be reviewed by the intelligence manager and the senior investigating officer twice a week (Evaluated)
- At the conclusion of the investigation, the means of collation, logging and use of the intelligence gathered during this investigation will be formally reviewed by the senior investigating officer and the intelligence manager, with a view to identifying weaknesses and formulating a “lessons learned” report (Reviewed)

Risk objective

Objective: to identify and manage the risks posed by the suspect X and his previous attempts to corrupt law enforcement officers (Specific)

- All officers involved in this investigation will have signed security or indoctrination documents before being engaged and all intelligence will be shared solely on a need-to-know basis (Measurable, Achievable, Realistic)
- The risk of corruption and compromise will be regularly evaluated by the senior investigating officer and the risk adviser (where there is one) or the intelligence manager (Evaluated)
- Continuous review of the investigation evidence obtained from searches, communication intercepts and the like will be examined for any indication of compromise of staff and duly reported (Reviewed)

Target-hardening objective

Objective: to receive and collate strategic intelligence concerning the security of Anyland’s borders, with a view to informing Ministers of any identifiable weaknesses (Specific)

- The tactical intelligence gathered will inform strategic intelligence. Obvious weaknesses will be reported as soon as possible after they have been identified and confirmed; otherwise, a report will be submitted within three months of the conclusion of this operation (Measurable, Achievable, Realistic, Time-limited)
- Collection of strategic intelligence will be evaluated by the intelligence manager or prevention officer and senior investigating officer on a monthly basis (Evaluated)
- Senior officers and representatives will be invited to contribute when the report is being drafted (Reviewed)

Financial objective

Objective: to identify all those involved in the laundering of assets and seize the assets, where obtainable (Specific)

- All evidence or intelligence concerning finances will be provided to the financial investigator as expeditiously as possible for the financial investigator to act upon as he or she see fit (Measurable, Achievable, Realistic)
- The financial investigation should be completed within 6 months of X's conviction (or as appropriate) or if no conviction is to take place, within 12 months of the commencement of this investigation (Time-limited)
- The senior investigating officer, financial investigator and intelligence officer will meet twice a month to ensure that intelligence and evidence are being provided, as outlined above (Evaluated)
- The financial investigation will be reviewed with senior officers or prosecutors, as appropriate, within three months of its conclusion (or as appropriate) to identify good practices and any lessons learned (Reviewed)

Disruption objective

Objective: to disrupt the activity of the organized criminal group by organizing regular enforcement action against the individuals, and against businesses run by this criminal group

- To liaise with other law enforcement agencies and to establish enforcement operations twice per month
- To conduct a review with the other agencies after each raid to ascertain the number of arrests and any intelligence gathered
- To review at the end of the investigation the conduct, results and usefulness of the raids and to assess the value of future enforcement raids with the other agencies.

To collate is to bring together different pieces of information so that the similarities and differences can be observed.

Success

Success depends upon what you are seeking to achieve and can be measured accordingly. Successes can include, but are not limited, to:

- Arrests and prosecutions, e.g., the arrest of your main suspect subject or of his associates
- Protection of intelligence, e.g., by ensuring that a need-to-know basis is adhered to and that intelligence is properly security-marked and stored (i.e., that the intelligence gathered and collated during this investigation has remained secure)
- Disruption of criminal activity, e.g., deploying law enforcement assets to interfere with the activities of the criminal enterprise, for example, X-ray scanners at border crossings or road checks in the areas in which they live or work

- Seizure of assets, e.g., any cash being moved outside of the jurisdiction or being gathered as a result of the criminal activity
- Increasing political or judicial awareness, e.g., reporting on findings identifying both national and international weaknesses with a view to changing policy
- Increased intelligence, e.g., the collation and recording of intelligence that can be used to risk-assess future smuggling routes or methods
- Enhanced investigator or investigation skills, e.g., dealing with a different or new type of criminality and the use of different tactics to counter it.

Reviewing objectives

During the course of the investigation, it is essential that progress, as measured against the objectives, is regularly reviewed. This can usually be carried out by the team leader, but sometimes it may be appropriate for the judiciary prosecutor or a senior officer to undertake the review. A major point to keep always in mind when reviewing this type of investigation is that the objects of smuggling are human beings. Investigations into the smuggling of migrants involve people and timeliness is key to preventing harm and even death. Slow progress in investigating illicit drugs importation may result in the entry of illegal substances into a country. An equally slow operation to smuggle migrants could result not only in the illegal entry of people but also, and more importantly, in the endangerment or loss of life. If such a tragedy results, investigators can expect extremely close judicial and media scrutiny of what they did and why.

Case files and organizational logs

A good organizational tool in planning and strategizing is the case file, in which all records, documentation and investigative notes are combined with intelligence to assist in present — and perhaps future — investigations. Further to this, an organizational log can be used; a decision log can be kept, in which each decision is recorded, with the date and time it was made, and the name of the person who made it.

B. Key investigative strategies

A strategy is a detailed plan outlining specific measures needed for the attainment of a specific goal. The strategies that you may employ in an investigation into the smuggling of migrants will be strongly influenced by the primary objective and by what is possible within your jurisdiction. For information on the types of investigative approaches that may be employed, refer to module 3 on investigative approaches.

Ultimately, we need to stop the smuggling of migrants. Your objectives should be based on this goal. Whatever your objectives, strategies need to be put in place to ensure that you are able to achieve those objectives. If your primary objective is to arrest and prosecute criminals, then strategies need to be put in place to ensure best practices for obtaining evidence. While strategies can be generic and are often identical in different investigations, they exist to provide a framework. They will also prove useful should the team leader or key members of an investigative team change.

Here are some of the key strategies to be used in investigations into the smuggling of migrants, with explanations of the role they play in those investigations. Most strategies will provide the method to be used in addressing specific issues, as follows:

<i>Strategy :</i>	<i>Role in investigations:</i>
International strategy	In module 1 you will have seen that a key element in proving the occurrence of the smuggling of migrants is the fact that the illegal entry of a migrant has been facilitated or effected by a smuggler. International cooperation is usually required in this type of investigation.
Forensic strategy	All too often, forensic opportunities are missed in investigations into the smuggling of migrants. Early recognition of the evidence that forensic science can provide can often be key to a successful prosecution.
Media strategy	No country or law enforcement agency can stop the smuggling of migrants. Officers may need to use the media to support what they are doing or to undertake to disrupt the efforts of their targets. Officers may also need a strategy to ensure that the media does not undermine investigations. Conversely, they may have difficult questions to answer if something goes wrong! Media strategies can also be utilized to raise awareness in vulnerable communities of the risks of the smuggling of migrants
Witness strategy	How are witnesses, who may be illegal immigrants, going to be dealt with or cared for? Are other agencies, such as the border guard or non-governmental organizations, to be consulted? Will witness interviews be recorded (video or audio recording)? What are the witness protection issues? How will those issues be handled?
Financial strategy	Again, from module 1, you will know that financial or other material gain is required to prove an offence. It is important to remember that financial investigations can be conducted even within a context of very small amounts of money. How is the existence of this gain to be substantiated and by whom?
Information-sharing strategy	There are often different police forces involved (local, regional, national) plus border guards. As there is often a lack of internal communication between partners, a strategy should exist to provide for this.

C. Operational risks

As in any operation, there are a variety of risks that need to be managed in order to ensure a successful outcome. Some of these risks can be managed with the assistance of a suitable objective and strategy. Some risks are increased owing to the specific nature of investigations into the smuggling of migrants. The present section will highlight some of these risks. It does not, however, provide comprehensive guidance on risk assessment; more information on this can be found in the UNODC specific training module on risk assessment.^a

^a See module 5 of the *UNODC Anti-Human Trafficking Manual for Criminal Justice Practitioners*, available at <http://www.unodc.org/unodc/en/human-trafficking/anti-human-trafficking-manual.html>.

The four biggest risk factors affecting the successful completion of an operation on the smuggling of migrants have been identified based on experiences of different countries. These risk factors are set out below:

<i>Risk factor</i>	<i>Explanation</i>
Time	We are dealing with people. They cannot be left in the back of a lorry or in the open for days on end, as other commodities can be. The need for speed can lead to errors if not properly managed. Evidence can be destroyed or lost where, for example, vessels that have been used to smuggle migrants have been returned to their lawful owners without a proper examination. There have also been reports that smugglers throw their human cargo overboard on the high seas to avoid being detected by law enforcers. Often, there may be a requirement of specific legal approval and the time needed to fulfil this requirement could also impact upon the factor of timeliness.
International scale of the investigation, including language	While there is always the possibility of law enforcement cooperation no matter how challenging the environment, there can still be major difficulties associated with information-sharing between States. Those difficulties may cause delays or hinder the provision of what was sought. Language is frequently a barrier to successful outcomes. Several languages may be involved, entailing the recruitment of appropriately trained interpreters.
Resources	In many countries, the fact that preventing and combating the smuggling of migrants are not a policing priority results in an insufficient number of human resources (officers, prosecutors) and other resources (including technical and financial). Limited technological resources can be a hindrance when, for example, smugglers of migrants are more advanced technologically than law enforcement officers, which is often the case.
Corruption	There are several occasions throughout the process of the smuggling of migrants and the investigation into the smuggling of migrants and related activities when the factor of corruption can play a role in countries of origin, transit and destination. For instance, smuggling often encompasses the proper issuance of visas and passports that have been obtained improperly, through corruption. The fact that operations involving the smuggling of migrants are of an international nature can lead to a reduction of control and an increase in the risk of investigations becoming compromised through corruption.

Some risks cannot be eliminated by the team leader or his or her team. However, through being aware of possible operational risks, you become more prepared. If you are aware of the nature of the risks to the investigation, and what is occurring in that regard, then you can seek to manage or reduce those risks. As is the case in many areas, you cannot confront challenges of whose existence you are unaware. Investigators must approach operations with a focus on the goals that they wish to achieve, but they must also be mindful of what could hinder them from achieving those goals. This includes being aware of risk management approaches that require legislative approvals and ensuring that all such approvals are sought in a timely fashion. The establishment of appropriate objectives and strategies will help facilitate this course of action.

D. Concluding remarks

Inseparable from the setting of objectives is the need to pursue them on a case-by-case basis. A number of your objectives may be identical to those set by other investigations, while some will be unique to your own. Clearly defined objectives may prevent investigators from changing course; but if properly pursued, they can be reviewed and redrafted and thereby adapted to changing circumstances.

Success is all-important and if you can demonstrate that you have achieved what you set out to achieve, then you, and the investigation, will have succeeded.

How strategies are put in place and whether they are maintained in written form are ultimately dependent on local procedure and practice. Given the international scale and often complex nature of operations on the smuggling of migrants, it may be advisable to have documents in place to allow for continuity planning (in cases where someone new has to take over an investigation or part of it, usually at short notice) and for transparency. Practitioners must always consider what tools they need to support and achieve their aims.

Risk assessment and management are key to all investigations and, again, must be undertaken on a case-by-case basis. The process usually starts with the development of an awareness of the risks involved. There have been many situations where officers failed to detect obvious risks and threats; investigators must therefore remain alert to those challenges in the course of their investigations. Once a risk is clearly perceived, it can be managed or reduced.

Glossary

The definitions provided in the present glossary are neither official nor universal. They are provided solely for the purpose of facilitating the use of the *UNODC Basic training manual on investigating and prosecuting the smuggling of migrants*.

<i>Term</i>	<i>Definition</i>
Admissible	Acceptable or allowable by a court of law at trial.
Aggravating factor or circumstance	A factor or circumstance that makes a situation or action more serious than it would otherwise be.
Anti-surveillance	Actions that attempt to evade surveillance.
Asset seizure	Assuming custody or control of property on the basis of an order issued by a court or other competent authority.
Asylum-seeker	A person seeking to be admitted to a country as a refugee.
Case file	File containing papers, evidence, transcripts, intelligence reports etc. that are relevant to a particular case.
Cell site analysis	The analysis and marking on a map of the transmitter (mast) locations at which a mobile phone has been used. Often, this can demonstrate that the telephone was used in various areas and can facilitate the mapping out of routes and the narrowing down of possible locations of safe houses or similar sites.
Classified information or communication	Information or communication that is arranged in classes or categories so as to be available to authorized persons only.
Collate	To bring together different pieces of information so as to reveal or establish similarities and differences.
Confidential	Done or communicated in confidence or secrecy.
Controlled delivery	The technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of its or their competent authorities, with a view to investigating an offence and identifying persons involved in the commission of the offence (United Nations Convention against Transnational Organized Crime, article 2, para. (i)).
Corroborate	To confirm and sometimes add substantiating value to the testimony of a witness or party in a trial.
Counter-surveillance	Actions that attempt to identify those conducting surveillance.

<i>Term</i>	<i>Definition</i>
Covert	Discreet or hidden. A term used in operational work. For example, covert policing is discreet policing whose primary aim is to prevent suspects from knowing that police are engaging in such an operation.
Criminal enterprise	Engagement by an organized criminal group in criminal activity.
Debrief	To question for the purposes of obtaining knowledge or information, or to provide information or instruction.
Decision log	Document recording all decisions made and policies and objectives set with respect to a particular investigation.
Disrupt	To interfere with the activities of a criminal group without necessarily arresting the ringleaders, for example, by arresting the forger of the passports used by migrants.
Drop-down device	A portable audio recorder, concealed in an everyday object (such as an empty Coke can) dropped or placed at a point near to where a criminal meeting is to be held.
Entrapment	Action by a law enforcement officer or government agent aimed at inducing or encouraging a person to commit a crime.
Exit strategy	Strategy by which a person can be removed from a situation in which changed circumstances or events put him or her or an operation in danger.
Forensic	Entailing the science or technology used in the investigation and establishment of facts or evidence in a court of law.
Green border	A land border between State checkpoints.
Hard-wired device	An audio recorder or transmitter (or location device) concealed within a vehicle or premises. Provides a longer battery life and the possibility of real-time listening or tracking.
Illegal entry	Crossing borders without complying with the necessary requirements for legal entry into the receiving State (Article 3, Smuggling of Migrants Protocol)
Informant	Someone who provides information to law enforcers on an ad hoc or regular basis, and is often recruited for that purpose.
Information	Raw data that are received by law enforcement agencies.
Intelligence	Information that has been operated upon to render it more meaningful (for example, through corroboration, analysis, evaluation or dissemination) and is then passed on to or used by another person, agency or unit.
Investigation	Process carried out by law enforcement personnel entailing enquiry into a matter through research, follow-up, study or formal procedure.
Irregular migrant	Someone who, because of illegal entry or the expiry of his or her visa, lacks regular status or authorization to remain in a transit or destination country.
Irregular migration	Movement that takes place outside the regulatory norms of origin, transit or destination countries.

<i>Term</i>	<i>Definition</i>
Minor	According to international law, any person under 18 years of age.
Mission creep	The situation in which one starts off along one line of investigation and becomes drawn into another, without adequate preparation or planning.
Mitigating factor or circumstance	A factor or circumstance that makes a situation or action less serious than it would otherwise be.
Non-refoulement	The principle according to which a State cannot expel or return a person to the frontiers of territories where his or her life or freedom is threatened because of his or her race, religion, nationality, membership of a particular social group or political opinion.
Open source	Information that is made freely available to the public.
Operation	Process or series of acts undertaken to achieve a law enforcement goal.
Organizational log	Document recording all actions taken with respect to a particular investigation.
Proactive investigation	An investigation commenced in response to the receipt of information, a complaint or intelligence.
Profiling	Analysis of information or intelligence for the purpose of developing indicators to enable easier identification of, inter alia, smuggled migrants, smugglers of migrants, routes, communication methods, false passports etc.
Property	Assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets (Organized Crime Convention, article 2, para. (d)).
Pull factors	Factors that draw would-be migrants towards particular countries. For example: language, family ties, employment, benefits, schooling, health care etc.
Push factors	Factors that push would-be migrants away from particular countries. For example: war, poverty, conflict, natural disaster, lack of employment, crime etc.
Reactive investigation	An investigation commenced as a law enforcement response to a particular incident.
Refugee	A person who, owing to a well-founded fear of persecution on the grounds of race, religion, nationality, membership in a particular social group, or political opinion or for political reasons, including conflict and war, is unable or unwilling to return to his or her country of origin (or, if stateless, to his or her country of habitual residence).
Resources	The human, financial, technical, logistic, informational and other assets that can be utilized in combating the smuggling of migrants.
Risk	The possibility of suffering harm, loss or danger.
Sham marriage	A marital union entered into for the purpose of circumventing immigration laws.

<i>Term</i>	<i>Definition</i>
Smuggled migrant	A person whose illegal entry or stay in a country of which he or she is not a national or permanent resident has been facilitated by another person, for the purpose of deriving financial or other material benefit.
Strategic intelligence	Intelligence that contributes to producing a bigger picture in respect of the smuggling of migrants than that produced by a specific investigation or investigations.
Strategy	A detailed plan outlining specific measures devised to enable the attainment of a specific goal.
Surveillance	Observation of persons engaged in criminal activity through the use of static methods (observation posts), mobile methods (the following of those persons on foot, in a car etc.) or technical ones (tracking devices).
Tachograph	A device that measures the speed of a vehicle and the distance that it covers, and then produces a record (or tachogram) of its readings.
Tactic	An operational procedure or approach used to achieve a goal. For example, use of covert monitoring.
Tactical intelligence	Intelligence that supports investigations.
Target hardening	Making an object being targeted by a crime group more difficult to access or attack. For example, through installing scanning devices at ports for the purpose of scanning lorries in the hope of detecting concealed migrants.
Technique	The means by which a tactic is implemented. For example, wiretapping.
Top-up information	Information obtained by exploiting the fact that some mobile telephones do not operate on a contract basis and must be paid for in advance. In cases where these phones are topped up, regular locations or shops used may be revealed and usage indicated.
Trauma	Psychological or emotional injury that creates substantial, lasting psychological damage to a person.
Victim of crime	Person who has been harmed by a perpetrator of a crime according to international and/or domestic law.
Wiretapping	Also known as telephone interception. The listening engaged in by law enforcement agencies to the telephone calls of criminal suspects or the reading by those agencies of the e-mail/SMS messages of such suspects.

Insert below any other terms that you come across during training



UNODC

United Nations Office on Drugs and Crime

Vienna International Centre, PO Box 500, 1400 Vienna, Austria
Tel.: (+43-1) 26060-0, Fax: (+43-1) 26060-5866, www.unodc.org