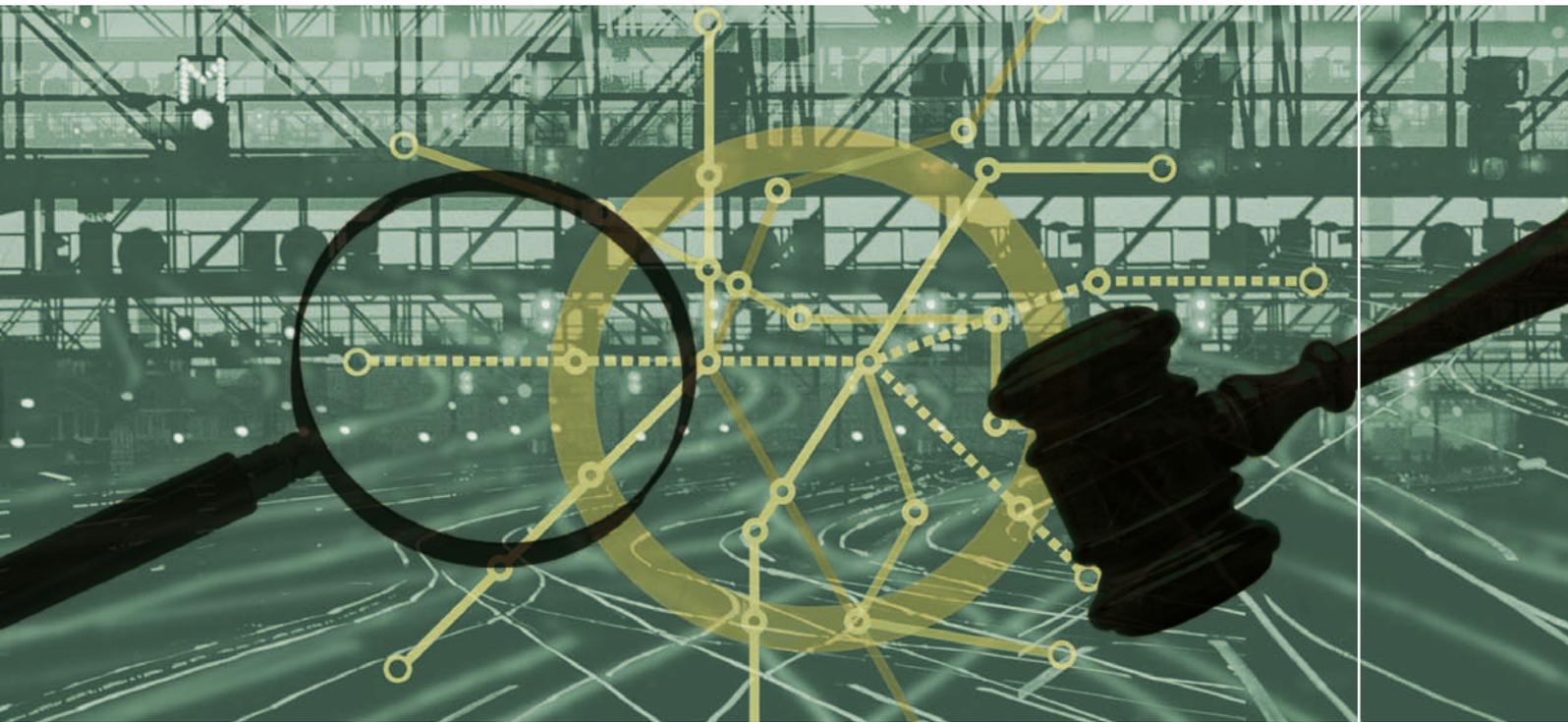




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Basic training manual on investigating and prosecuting the smuggling of migrants

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



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Basic training manual on investigating and prosecuting the smuggling of migrants

Module 1:

Concepts and categories of the smuggling of migrants and
related conduct



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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.

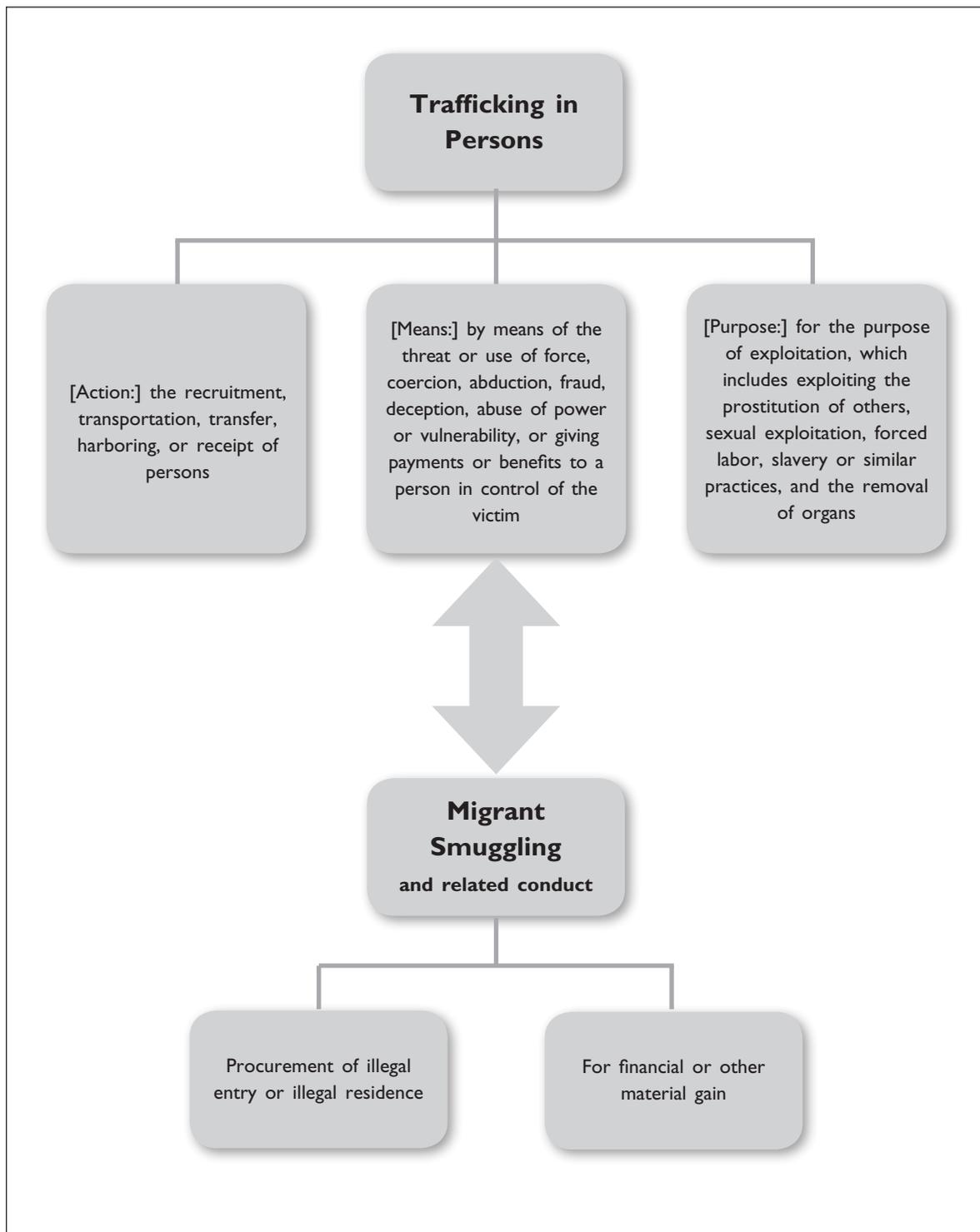
3. *Victim*

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?



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