



**UNODC**

United Nations Office on Drugs and Crime

# Issue Paper

**Smuggling of Migrants  
by Sea**

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This publication has not been formally edited.

# Issue Paper: Smuggling of Migrants by Sea

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## Executive Summary

Smuggling of migrants is defined by Article 3 of the Migrant Smuggling Protocol supplementing the United Nations Transnational Organized Crime Convention (UNTOC), 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.” The specific nature of the sea-based component of the smuggling journey resulted in a dedicated section on the issue in the Migrant Smuggling Protocol. While smuggling by sea accounts only for a small portion of overall migrant smuggling around the world, the particular dangers of irregular travel at sea make it a priority for response; though more migrant smuggling occurs by air, more deaths occur by sea.

The journey of the migrant smuggled by sea often starts a significant distance away from the coast of departure. Some journeys to the coast may take mere days, but others can take place over years during which the migrant must work en route to raise money for his passage. Arduous desert crossings and victimization by smugglers and other criminals en route mean that some do not survive overland journeys to the coast. Contrasted with these extreme experiences, economically empowered migrants can afford a higher level of smuggling service and may experience no particular hardship, simply travelling through various international airport hubs toward the coastal country from where their sea journey commences.

The type and size of vessel used to smuggle migrants by sea depends on the time, place and financial capacity of migrants undertaking the smuggling journey. In some countries, boats of only a handful of passengers are commonly intercepted by authorities, while in others vessels of several hundred people have been used. While voyages may be comfortable when conditions at sea are mild and the vessel is equipped with adequate food, water and sanitation, the journey is a harrowing one for the majority of migrants who report rough conditions, terrible cold and scarce food and water.

The nature of the crime and its relationship with smuggling of migrants by land and by air means that it is a successful crime type that yields high profits for smugglers with all the risks being borne by migrants. Indeed, migrant smuggling by sea can be understood as a criminal business, which is competitively run as such. Smuggling by sea is generally carried out by flexible criminal groups or individuals operating on the basis of repeated contractual arrangements, rather than by hierarchical organizations.

There are two methods used when vessels approach coasts of destination. One aims to reach land by evading detection by authorities, the other sets out to be detected and intercepted or rescued by authorities in territorial waters of destination coastal countries. In both situations, detecting smuggling vessels at sea is a key challenge for coastal states which may have limited resources and large search and rescue areas of responsibility.

Upon detecting vessels, the key challenge is to balance objectives with obligations at international law, including the Migrant Smuggling Protocol. Smugglers are generally well-informed about states’ protection obligations and act to exploit them, instructing migrants what to do upon interception to increase their chances of gaining entry into and remaining in countries of destination. For instance, officials responsible for intercepting vessels at sea have been faced with situations of people sabotaging their own vessels to force authorities to carry out rescues. Suggestions made in respect of encountering migrant smuggling at sea include

increased support of coastal states through joint patrols and provision of resources, and increased compliance with international legal standards and obligations in carrying out interceptions of smuggling vessels at sea.

While responding to the situation at hand and ensuring that persons on board are appropriately assisted, a key challenge is to seize evidentiary opportunities to investigate smuggling-related crimes. The complex nature of migrant smuggling networks and their modus operandi means that smugglers cannot be identified purely by looking to smugglers who may be on board boats; the transnational criminal network itself must be traced from a smuggling vessel, back to the coast of embarkation, and from there back to countries of transit and origin. Suggestions made for improved investigation and prosecution of migrant smuggling by sea include harmonizing domestic legislation with the UNTOC and the Migrant Smuggling Protocol. Further it is suggested that sentences imposed for smuggling offences be publicized as a means of deterring would-be smugglers. Capacity building measures are also suggested so as to increase identification of smugglers on vessels, and to better link sea-based crimes with land-based smugglers.

Preventing migrant smuggling by sea requires states to balance their obligations in international law with their legitimate interests in protecting state sovereignty from violation by organized crime groups. But law enforcement efforts alone are not adequate to prevent migrant smuggling by sea; the Migrant Smuggling Protocol stresses that prevention efforts must address root causes that lead a person into the hands of smugglers in the first place. Suggestions made for preventing migrant smuggling at sea include raising awareness about the dangers of sea smuggling journeys and the criminality of smuggling. Suggestions are also made to raise awareness of those who influence political and policy decisions, so policies put in place protect state sovereignty, uphold international obligations, and are not vulnerable to exploitation by smugglers. Also emphasised is the responsibility of coastal states of departure to intercept smuggling vessels before they embark on sea journeys. Beyond this, comprehensive data collection, analysis and research are suggested to strengthen evidence-based responses.

Experts from countries of origin, transit and destination unanimously agree that the most essential ingredient for effective and comprehensive response to migrant smuggling by sea is strengthened international cooperation to remove areas of impunity for smugglers along smuggling routes. Suggestions made for cooperating in response to migrant smuggling at sea include aligning activities with the Migrant Smuggling Protocol and increasing the role of UNODC in facilitating cooperative response. The value of bilateral and regional cooperation arrangements is stressed, with emphasis on flexible cooperative networks for effective and efficient on-the-ground response. Regular coordination meetings and joint operations are suggested to improve strategic and operational interagency coordination, as is the empowerment of central designated authorities to address migrant smuggling by sea.

In short, while it is difficult to make generalizations about migrant smuggling by sea, two key points hold true around the world. Firstly, migrant smuggling by sea is the most dangerous type of smuggling for the migrants concerned, making it a priority concern for State response. Secondly, efforts to combat smuggling of migrants will be unsuccessful unless cooperation is strengthened not only between countries of sea departure and arrival, but also among the countries of origin, transit and destination along the entire smuggling route.

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## 1. OVERVIEW OF MIGRANT SMUGGLING BY SEA

Attempting to isolate the issue of migrant smuggling by sea from other forms of migrant smuggling is in some ways an artificial and potentially misleading exercise. Migrant smuggling by sea generally occurs as part of a wider smuggling process often involving land and/or air movements. Furthermore, the complex nature of criminal migrant smuggling networks and their modus operandi means that smugglers who use sea routes cannot be identified purely by looking to the sea; the transnational criminal network itself must be traced from a smuggling vessel, back to the coast of embarkation, and from there back to countries of transit and origin.

However, the specific nature of the sea-based component of the smuggling journey resulted in a dedicated section on the issue in the Migrant Smuggling Protocol, supplementing the United Nations Transnational Organized Crime Convention (UNTOC). The unique challenges involved in addressing the crime also inspired Resolution 5/3 of the 5<sup>th</sup> Conference of Parties to the UN Convention against Transnational Organized Crime, in which States Parties request UNODC to prepare an Issue Paper on the topic. This Issue Paper is offered in response to that request, in the hope that readers will consider the issues addressed herein in the wider context of migrant smuggling, which is a transnational crime that transcends land, air and sea borders, and requires a response that does likewise.

This Issue Paper is the product of discussions held in Vienna at an expert group meeting dedicated to smuggling of migrants by sea. The Issue Paper is also based on a desk review of

research carried out on the issue, with particular emphasis on existing UNODC materials about smuggling of migrants more generally, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (the Migrant Smuggling Protocol).

### **1.1. Definition of smuggling of migrants**

Article 3 of the Migrant Smuggling Protocol defines migrant smuggling 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 Migrant Smuggling Protocol requires the criminalization of this conduct. In addition, Article 6 requires States to criminalize the following conduct:

“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” in order to obtain a financial or other material benefit.

In short, the combination of the following elements constitutes ‘migrant smuggling and related conduct’:

1. Either the procurement of an illegal entry or illegal residence of a person;
2. Into or in a country of which that person is not a national or permanent resident;
3. For the purpose of financial or other material benefit.

It is clear that the focus of the Migrant Smuggling Protocol is on criminalization of smuggling of migrants while protecting the rights of migrants. This fact is clarified by the statement of purpose contained in Article 2 of the Protocol. Further, Article 5 states that migrants shall not be liable for prosecution under the Protocol for having been smuggled. In this respect, Article 6(4) must also be noted, which explains that “nothing in this Protocol shall prevent a State Party from taking measures against a person whose conduct constitutes an offence under its domestic law.”<sup>1</sup>

### **1.2. Extent, patterns, routes and trends**

It is important to acknowledge the shortcomings of the information available on migrant smuggling by sea, limited by data collection methodologies used and inconsistencies between them. Often detailed information is collected about the extent of irregular migration, its patterns, routes and trends, but it is not disaggregated according to land, sea and air routes. Beyond this, where it has been disaggregated according to land, sea and air routes and methods, often the extent to which segments of routes are facilitated by migrant smugglers is

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<sup>1</sup> The fact that mere migrants are not the target of the Protocol, and the neutrality of the Protocol with respect to whether mere migrants should be the subject of any other offence is further explained in the UNODC Model Law against Smuggling of Migrants, at pp.6-7. See ANNEX – Relevant UNODC Resources.

not considered. Moreover, in many countries and regions of the world, information about irregular migration and migrant smuggling is simply not collected and analysed. In light of these considerations, this section aims only to provide an overview of migrant smuggling by sea around the world, and does not pretend to offer a comprehensive picture.

### **1.2.1. A global snapshot: smuggling by sea relative to smuggling by land and air**

According to the 2009 UNDP Human Development Report, there are an estimated 50 million irregular international migrants in the world today, a significant number of whom paid for assistance to illegally cross borders.<sup>2</sup> This number is believed to have increased since. While precise numbers of people who are smuggled in the course of irregular migration is not known, it is increasingly assumed that an overwhelming number of irregular migrants use the services of smuggling networks at some stage in their journey.<sup>3</sup>

The proportion of irregular migration that occurs by use of smuggling by sea must be put into perspective, relative to other modus operandi. For instance, in the European Union despite an increase in irregular migration by sea in the first half of 2011, the highest numbers of irregular entries overall come by land and air.<sup>4</sup> In other regions of the world, migrant smuggling by sea also accounts for significantly less smuggling than air or land routes. In some countries, a more popular method of achieving migratory objectives than entering a country by irregular means, is to enter regularly and then overstay visas. In 2010, there were 6555 irregular maritime arrivals in Australia with most migrants by sea arriving at or brought to off-shore territories, with only a minimal number reaching the Australian mainland. The same is true with respect to France for instance, where maritime smuggling does not affect metropolitan France but occurs from the Comoros islands to the French territory of Mayotte off the east coast of Africa.

In the United States of America, while there are irregular arrivals by sea from the Dominican Republic, Bahamas, Cuba and Haiti, significantly more people migrate irregularly by way of southern land borders. Of those who do irregularly cross maritime borders, most are found to do so without using the services of smugglers. Likewise in Canada, the numbers of un-facilitated entries were higher than migrant smuggling interdictions, with most irregular migrants arranging their own journey and border crossings via land.<sup>5</sup> Contrasted to the United States situation however, in recent years Canada has experienced incidents of large non-commercial vessels of several hundred passengers arranged by smugglers.<sup>6</sup>

Meanwhile, sea smuggling can be considered the predominant means of smuggling when considered from the perspective of particular categories of smuggled migrants. Journeys across the Gulf of Aden for instance may be undertaken for lack of alternative choice. In other words, while sea smuggling is only one segment of the overall smuggling process, in some parts of the

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<sup>2</sup> UNDP, Human Development Report 2009, <http://www.undp.org/hdr2009.shtml>.

<sup>3</sup> See for instance, ICMPD I-map, <https://www.imap-migration.org/index2.html> and <https://www.imap-migration.org/pages/en/migrationroutes.html> accessed on 19 July 2011.

<sup>4</sup> European Council on Refugees and Exiles, Defending Refugees' Access to Protection in Europe, December 2007, available at <http://www.unhcr.org/refworld/docid/4766464e2.html>, p.41.

<sup>5</sup> Canada-United States IBET Threat Assessment 2010 (Reporting on Year 2009), <http://www.rcmp-grc.gc.ca/ibet-eipf/reports-rapports/2010-threat-menace-eng.htm#ii>.

<sup>6</sup> See for instance, 'Police investigating refugee boat to see if human smuggling laws violated: Vic Toews', The Star, 13 August 2010, <http://www.thestar.com/news/canada/article/847883--police-investigating-refugee-boat-to-see-if-human-smuggling-laws-violated-toews?bn=1>, accessed on 25 October 2011.

world, for some people it may be the only means of travel available. Economically disempowered persons at the low-cost sector of the smuggling market may undertake risky sea journeys because of the lack the resources to afford safer methods of travel.

The point to emerge is that while smuggling by sea accounts only for a small portion of overall migrant smuggling around the world, some States are disproportionately affected. Added to this is the fact that the particular dangers of irregular travel at sea make it a priority concern for response; though more migrant smuggling occurs by air it is clear that more deaths occur by sea.

### 1.2.2. Europe

The International Centre on Migration Policy Development (ICMPD) estimates that between 100,000 and 120,000 migrants and persons in need of protection cross the Mediterranean Sea every year without necessary documents.<sup>7</sup>

In 2010, European Union Member States and Schengen Associated Countries reported a total of 104,049 detections of illegal border-crossing at sea and land borders of the European Union.<sup>8</sup> The number of those crossings that were facilitated is difficult to ascertain given the different definitions applied by Member States; however, in 2010 there were 8629 detections of facilitators.<sup>9</sup> The detection rate so far is comparable in 2011. This figure can imply that there are few smugglers involved in orchestrating irregular migration, or that facilitators of smuggling are notoriously difficult to apprehend.

The total number of African migrants apprehended at sea borders within the European Union in 2008 was likely between 52,000 and 54,000; numbers that are close to the number of migrants that paid to be smuggled.<sup>10</sup> Not all smuggled migrants are intercepted at sea borders; an estimated 1000 migrants died or disappeared in 2008; the same year that the crime of smuggling migrants from Africa to Europe was calculated to have grossed around USD\$150 million.<sup>11</sup>

In its 2010 Transnational Organized Crime Threat Assessment UNODC estimates that the trend of smuggling of migrants from Africa to Europe is declining.<sup>12</sup> FRONTEX (the European agency responsible for integrated border management) also reported that migrant flows by sea significantly decreased from a peak in 2008 to a low in 2009 and 2010. There were 11,766 arrivals of irregular migrants by sea between January and September of 2010 representing a 70% decrease from the same period for the year before.<sup>13</sup>

However, most recent information shows an increase in sea trends in the first half of 2011 following the political changes resulting from the Arab Spring and particularly the Libyan

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<sup>7</sup> ICMPD, 'Irregular Transit Migration in the Mediterranean', cited in A. Fischer-Lescano *et al.*, 'Border Controls at Sea: Requirements under International Human Rights and Refugee Law', 21 *International Journal of Refugee Law* (2009) 256, at 257.

<sup>8</sup> FRONTEX Annual Risk Analysis 2011, Warsaw April 2011, p.13.

<sup>9</sup> FRONTEX Annual Risk Analysis 2011, Warsaw April 2011, p.13.

<sup>10</sup> UNODC, Transnational Organised Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.75.

<sup>11</sup> UNODC, Transnational Organised Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.76.

<sup>12</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.67.

<sup>13</sup> UNODC, Issue Paper: Transnational Organized Crime in the Fishing Industry 2011, p.60-61.

conflict. Indeed, in its most recent report, FRONTEX notes that ‘without doubt’ there has been increased pressure on Europe’s external borders owing to two key routes; one across the land border from Turkey to Greece, and the second from Libya to Italian islands across the Mediterranean Sea.<sup>14</sup> In the second quarter of 2011, while trends at the land border were relatively stable, in contrast detections increased at sea borders. There were 27,500 detections in this period, a nine-fold increase from the year before. Of those detections, 95% were in the Central Mediterranean region.<sup>15</sup>

### **Central Mediterranean**

Generally, there has found to be an increase in smuggling of migrants in the number of interceptions of unauthorized migrants along the Italian, Spanish and Maltese coasts since 2000.<sup>16</sup> Almost all irregular migrants arriving in these countries are Africans.<sup>17</sup> Around 65,000 irregular migrants landed in these three countries in 2006 and 40,000 in 2007 representing 23% of all illegal border crossings detected in the EU in that year.<sup>18</sup> After negligible detections in 2010, there were around 50,000 detections for the first half of 2011 alone.<sup>19</sup>

The Arab Spring of 2011 has and will continue to have an impact on smuggling routes. The Italian island of Lampedusa is still a preferred destination, but ports of departure have shifted. STATT Consulting correctly predicted an increase in the number of boats leaving from Tunisia.<sup>20</sup> While former routes such as the use of Gibraltar and Tunisia had almost disappeared, recent statistics show that there was a surge of Tunisian nationals travelling on the Central Mediterranean route in the first quarter of 2011 fleeing unrest in their home country. Accelerated readmission agreements between Italy and Tunisia reduced this figure by 75% in the second quarter of the year, but the overall number of detections on this route increased. Many migrants travelling this route do so independently, without the assistance of smugglers. However, there is also intelligence showing that Tunisian smugglers are moving operations closer to Libya so as to collaborate with the Libyan army loyal to the late Gaddafi, and that their modus operandi is similar to Libyan smugglers, collecting migrants, money and organising those who prepare boats.<sup>21</sup>

In the last decade, Libya was the main hub for Mediterranean crossings from Africa to Europe, particularly to Malta and Italy. The small island State of Malta faces significant challenges. Malta is a transit point for migration routes from the South to intended final destinations in Europe. Despite its small size (around 300 square kilometres) and population (around 400,000), its search and rescue area spans 260,000 square kilometres. Malta also has proportionately the greatest number of migrants per capita of the population; in 2008 the number of migrant

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<sup>14</sup>FRAN Quarterly, Issue 2, April - June 2011, Frontex, September 2011, p.11.

<sup>15</sup>FRAN Quarterly, Issue 2, April - June 2011, Frontex, September 2011, p.11.

<sup>16</sup>UNODC, Smuggling of Migrants, Global Review and Annotated Bibliography of Recent Publications, p.26.

<sup>17</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.75.

<sup>18</sup>UNODC, Transnational trafficking and the rule of law in West Africa a threat assessment, July 2009, p. 64.

<sup>19</sup>FRAN Quarterly, Issue 2, April - June 2011, Frontex, September 2011, p.17.

<sup>20</sup> STATT Consulting, Synapse, May 2011, Issue 4: The next phase of migration to Europe from Tunisia and Libya, p.4.

<sup>21</sup>FRAN, Quarterly, Issue 2, April - June 2011, Frontex, September 2011, p.23

arrivals exceeded the local birth rate.<sup>22</sup> In the first 6 months of 2011 alone, there were 1531 arrivals by sea.

Since 1998, new laws in Italy and agreements between Italy and Tunisia acted to reduce the number of arrivals from Tunisia, pushing smuggling networks to Libya. There were 31,300 detections in Lampedusa during the whole of 2008.<sup>23</sup> An agreement entered into between Italy and Libya appears to have resulted in an abrupt decline of detections along the Italian sea borders of 74% between 2008 and 2009, with no landings recorded in Lampedusa in the last quarter of 2009.<sup>24</sup> This sharp decline seemed to have displaced some of the flow to eastern coasts of Italy and possibly Greece.<sup>25</sup> Furthermore, while the number of arrivals in Europe dropped significantly following bilateral agreements between Italy and Libya, the increased number of intercepted boats did not correlate with a decreased number of departures, implying that the routes leading to coastal departure points were not interrupted.

One direct impact of the vacuum of power in the wake of the Arab Spring is the bilateral agreements between Libya and countries of destination in the Mediterranean being rendered null and void. Added to this, are allegations that the Gaddafi regime coerced migrants to travel towards the EU, resulting in several small vessels detected.<sup>26</sup> There have been reports of the involvement of the Libyan army and military gathering migrants from Sub-Saharan and Central Africa as well the Horn of Africa to arrange their embarkation onto boats bound for Europe.<sup>27</sup> Large numbers of Central African, Nigerian and Ghanaian nationals resident in Libya were detected travelling by boat to Lampedusa, Sicily and Malta, many of who claimed to have been forcibly expelled from Libya. However, overall, the fall of Gaddafi is reported to have dramatically reduced irregular migration from Libya.<sup>28</sup>

The situation in Libya remains unclear. STATT Consulting predicts that it will continue to develop as a hub for smuggling of all types, as it takes time for a new government to assert control over migrant smuggling and other criminal networks.<sup>29</sup> It is also anticipated that Libyan migrant smugglers will broaden their customer base from a wider range of source countries resulting in greater market power of Sub-Saharan smugglers.<sup>30</sup> A possibility is that new routes will develop from eastern Libya to Greece and Italy, given that smugglers easily adapt their methods, sometimes using longer distances with worse travel conditions for migrants.

### ***Western Mediterranean***

There are different data findings for arrivals by sea in the key European countries that receive migrants from Africa. Arrivals in Spain by sea are mainly concentrated on the Canary Islands, the

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<sup>22</sup> Statement by Emigrants Commission (Malta), October, 2008, Provided by Professor Patricia Mallia, University of Malta.

<sup>23</sup> FRONTEX Annual Risk Analysis 2011, Warsaw April 2011, p.14.

<sup>24</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.76.

<sup>25</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.76.

<sup>26</sup> FRAN, Quarterly, Issue 2, April - June 2011, Frontex, September 2011, p.14.

<sup>27</sup> FRAN, Quarterly, Issue 2, April - June 2011, Frontex, September 2011, p.19.

<sup>28</sup> FRAN, Quarterly, Issue 2, April - June 2011, Frontex, September 2011, p.13.

<sup>29</sup> STATT Consulting, Synapse, May 2011, Issue 4: The next phase of migration to Europe from Tunisia and Libya, p.4.

<sup>30</sup> STATT Consulting, Synapse, May 2011, Issue 4: The next phase of migration to Europe from Tunisia and Libya, p.25.

Strait of Gibraltar and the Alboran Sea.<sup>31</sup> Another peculiar situation for Spain is the significant number of irregular migrant entries into Spanish enclaves of Ceuta and Melilla in Morocco; such entries result in entering Spanish territory without crossing the sea. The number of interceptions on the Spanish coast rose in the mid-1990s, more than doubling from 1999 to 2000 with estimates for arrivals since then putting the annual number between 15,000 to 19,000.<sup>32</sup> Illegal border crossing into the Canary Islands rose steadily and peaked during 2006 at around 30,000.<sup>33</sup> A sharp decrease in 2007 and 2008 followed. The extent to which smugglers facilitated these crossings is unclear.

Almost all irregular migrants to Spanish offshore territories are apprehended and rely on the lack of repatriation mechanisms in place to result in their release on the Spanish mainland. Those who arrive directly on the Spanish mainland prefer to flee rather than face processing.<sup>34</sup> In 2011, a 50% increase in irregular arrivals has been noted compared to the year before. This increase has been partially attributed to better weather conditions for the sea crossing, but overall irregular migration to southern Spain has been steadily decreasing since its peak in 2006.<sup>35</sup> Indeed, detections along the route from West Africa have markedly reduced, owing to increased cooperation between Spain and West African countries of Mauritania, Senegal and Mali.

### ***Eastern Mediterranean***

The land border between Turkey and Greece is a key challenge for the European region. Turkey is a key transit route for smuggling from Asia into several countries of Europe. The close proximity of Greece to Turkey, coupled with push factors such as political instability, violence, war and unrest in Iraq, between Israel and Palestine and in Sudan and Somalia have placed increased pressure on Greece. Greece is primarily a transit country for smuggling to other destinations in Europe; clandestine travel on ferries between Greece and Italy is a means of onward travel to other countries in the European Union.<sup>36</sup>

Land routes are primarily used to reach Turkey, from where onward travel into Italy then takes place in sailing boats or other small vessels from the western coast of Turkey or from Istanbul. Crossings at the land border often involve crossing the Evros River in small groups in inflatable boats. This is often done at night, with facilitators waiting on the other side to arrange onward travel by land and boat to Italy. Alternatively, sea smuggling journeys using fast boats are used to evade detection across the Aegean Sea. This route was largely reduced following severe penalties imposed on drivers of boats, resulting in a diversion of smuggling routes directly from Turkey to Italy.

While 28,848 arrivals by sea were recorded in the Eastern Mediterranean in 2009, 2010 saw only 6175 arrivals; 79% less than the year before.<sup>37</sup> Similarly, the Western Mediterranean route saw 5003 arrivals by sea in 2009, with 3436 in 2010; 31% less than the year before.<sup>38</sup> Given that

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<sup>31</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.75.

<sup>32</sup> UNODC, Global Review and Annotated Bibliography of Recent Publications, January 2011, pp.26 – 27.

<sup>33</sup> FRONTEX Annual Risk Analysis 2011, Warsaw April 2011, p.14.

<sup>34</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.75.

<sup>35</sup> FRAN, Quarterly, Issue 2, April - June 2011, Frontex, September 2011, p.19.

<sup>36</sup> FRONTEX Annual Risk Analysis 2011, Warsaw April 2011, p.15.

<sup>37</sup> FRONTEX Annual Risk Analysis 2011, Warsaw April 2011, p.15.

<sup>38</sup> FRONTEX Annual Risk Analysis 2011, Warsaw April 2011, p.15.

when smuggling is repressed in one area, it rises in another, it is notable that while detections of illegal border crossings via the Eastern Mediterranean sea route dropped by 79% between 2009 and 2010, use of the Eastern Mediterranean land route increased by 345%, from 11,127 detections in 2009 to 49,513 in 2010.<sup>39</sup> Taking into consideration the first seven months of 2011, shows that there has been a 24% increase from the year before, with 22,096 interceptions of migrants between January and July.<sup>40</sup> The number of those who used the services of smugglers is not known.

### ***European off-shore territory***

There is also significant smuggling of migrants from Africa to the nearby archipelago of Mayotte; a French overseas territory in the northern Mozambique Channel, less than 70km from Comoros. Generally, small fibreglass vessels are used to reach Mayotte, taking less than four hours from the Comoros archipelago, though sometimes larger vessels able to carry more than a hundred people are used. In 2010, 342 vessels were intercepted carrying a total of 7089 migrants, for which 523 smugglers were arrested.<sup>41</sup> Irregular migrants to Mayotte come from Comoros, but also from Madagascar, Tanzania and even Iraq.

### **1.2.3. Middle East**

There has been an increase in irregular migration from Somalia and Djibouti in the Horn of Africa across the Gulf of Aden to reach Yemen; in 2009 more than 32,500 people arrived by sea compared to 22,500 in 2008.<sup>42</sup> It is clear that the escalating food crisis in Somalia and other parts of the Horn of Africa will give more people incentive to flee their countries of origin. It is also likely that given the lack of safe alternatives to leave their country, refugees and migrants will turn to the services of smugglers to cross the Gulf of Aden.<sup>43</sup> Conditions of travel across the Gulf of Aden from Djibouti and Somalia to Yemen are so severe that the journey is conservatively estimated to have a mortality rate of 5%, with several more bodies never found.<sup>44</sup>

The significant lack of available literature about this smuggling by sea route highlights the need for further research, including on the impact of recent unrest in Yemen.

### **1.2.4. Americas**

In the 1990s, ships loaded with migrants from China on the coast of the United States of America dominated media attention. Since then, regular entry followed by overstaying following visa expiration has become the preferred modus operandi. Despite a significant increase in interdictions by the US Coast Guard in 2004 to 2005 (10,899 and 9,455 respectively) the flow

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<sup>39</sup>FRONTEX Annual Risk Analysis 2011, Warsaw April 2011, p.15.

<sup>40</sup>FRAN, Quarterly, Issue 2, April - June 2011, Frontex, September 2011, p.15.

<sup>41</sup> French police.

<sup>42</sup>Mixed Migration Task Force (co-chaired by UNHCR and IOM), Update n°8, August 2009.

<sup>43</sup>Médecins sans Frontières (MSF), No Choice: Somali and Ethiopian refugees, asylum seekers and migrants crossing the Gulf of Aden, June 2008; Mixed Migration Task Force Somalia (co-chaired by UNHCR – IOM), “Mixed migration through Somalia and across the Gulf of Aden”, report, April 2008.

<sup>44</sup>Medicins sans Frontieres, *No Choice: Somali and Ethiopian Refugees*, (MSF Report, June 2008), p.4.



has decreased with only 2,088 reported interdictions in 2010 and 2,474 in 2011.<sup>45</sup> Overall there has been a decline in smuggling of migrants by sea to the United States, as most smuggling predominantly takes place over the Mexico-United States land border. Indeed, 97% of smuggling to the United States takes place over the Mexican border while coastal apprehensions comprised less than 1% in 2005.<sup>46</sup> However, notwithstanding the overall decline of sea smuggling to the United States, tighter land border controls have encouraged smugglers to be more creative with an increase in the use of small fishing vessels from Mexico to California.<sup>47</sup> There have been isolated cases of smuggling by sea from Mexico to the US as far north as the coast of Malibu, California, some 230 kilometres from the border.<sup>48</sup>

Mexico is a key transit country for smuggled migrants by sea on their way to the United States of America. Cuban migrants may travel by stolen boats to reach Mexico. The boats are abandoned on beaches, where facilitators wait with trucks to assist the remainder of their journey overland from Mexico to the US. Alternatively, migrants may pose as tourists to be transported to safe houses where they are kept until payments are made for their onward travel to the final destination.

In the early 1990s, tens of thousands of Haitians attempted to enter the United States of America by boat.<sup>49</sup> The United States' response to suspend entry for undocumented migrants displaced the route towards Caribbean islands, particularly Bahamas and the Dominican Republic.<sup>50</sup> From the latter, the most logical route to the United States is east to Puerto Rico. Caribbean countries are often intended by smugglers as transit stops on route to the United States, but end up being final destinations. Statistics are scarce, but in 2002 the Ministry of Foreign Affairs of Bahamas and the authorities in the Turks and Caicos Islands reported that around 6,000 Haitian migrants were intercepted in their territorial waters, usually smuggled in boats operated by smuggling rings.<sup>51</sup> The United States Coast Guard intercepted 1,377 Haitians as well as 140 Dominicans and 422 Cubans in 2010, and 1137 Haitians, 222 Dominicans and 985 Cubans in 2011.<sup>52</sup>

For Haitians, the most direct route to the United States is to transit through the Bahamas. From Cuba, the quickest way to reach the United States is to travel by sea to South Florida which at the shortest distance is only approximately 150 kilometres away. However, despite this there are more Cubans travelling to the United States through the Southwest land border than the shorter sea route to Florida.

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<sup>45</sup> Alien Migration Interdiction, available at <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp>.

<sup>46</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.62.

<sup>47</sup> UNODC, Issue Paper: Transnational Organized Crime in the Fishing Industry, 2011, p.67.

<sup>48</sup> Four Charged in Suspected Illegal Immigrant Smuggling by Sea, 3 May 2011, <http://sanclemente.patch.com/articles/four-charged-in-suspected-illegal-immigrant-smuggling-by-sea>, Press Release.

<sup>49</sup> David Kyle and Marc Scarcelli, "Migrant smuggling and the violence question: evolving illicit migration markets for Cuban and Haitian refugees", *Journal of Crime, Law, and Social Change*, March 2009.

<sup>50</sup> IOM 2008 World Migration Report, p.213.

<sup>51</sup> Elizabeth Thomas-Hope, "Irregular Migration and Asylum Seekers in Caribbean", Discussion Paper n°2003/48, World Institute for Development Economic Research (WIDER), June 2003, p. 8.

<sup>52</sup> United States Coast Guard, Department of Homeland Security, <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp>, accessed on 9 December 2011.

With a coastline of 243,000 kilometres, Canada has also been targeted by smugglers of migrants by sea. On the western Coast, journeys take place across the North Pacific Ocean from South East Asia, primarily of Sri Lankan nationals. The 2010 Canadian threat assessment report of 2010 (reporting on the year 2009) notes that the Pacific region had 76 irregular arrivals of Sri Lankan nationals off the coast of Vancouver Island in one incident in October 2009.<sup>53</sup> A modus operandi used in recent years is for smuggled migrants to wait in safe houses in Bangkok, Thailand, before travelling by bus to the southern town of Songkla, where small wooden boats take them to sea where they are transferred onto larger fishing vessels, often transporting several hundred people across the Pacific Island.<sup>54</sup>

### 1.2.5. East Asia and the Pacific

Information about migrant smuggling in the East Asia region is scarce given that many countries have no data collection systems in place, and/or have different understandings of migrant smuggling and human trafficking.<sup>55</sup> Although several countries host significant numbers of undocumented migrants including Hong Kong (in China), South Korea, Malaysia, Taiwan and Thailand), there are no consolidated figures available on the extent to which migrant smuggling is involved, and of those smuggled how many were smuggled by sea.<sup>56</sup>

According to the 2008 IOM World Migrant Report, Japanese authorities reported approximately 207,000 irregular migrants in 2005, most of whom had arrived legally and overstayed, while an estimated 30,000 had been smuggled by boat.<sup>57</sup>

Australia is the primary destination in the Asia Pacific region. Migration by boat to Australia first occurred in the 1970s in the aftermath of the Vietnam War. The following decade, persons from further afield in South East Asia began arriving on Australian shores. However, from around 1999 onwards the third wave of arrivals by boat has predominantly been from the Middle East, often in larger numbers than previous arrivals and mostly with the assistance of migrant smugglers.<sup>58</sup>

Migrants from Afghanistan, Iraq, Iran and Sri Lanka are smuggled by sea to Australia. Malaysia and Indonesia are used as transit countries from where smugglers dispatch migrants on sea journeys to Australia.

Indonesia is the key transit country to Australia. Generally migrants will travel via overland and by air to Indonesia, from destination countries mostly in the Middle East. Generally they will be given a visa on arrival in Indonesia which they overstay as they wait for an opportunity to travel

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<sup>53</sup>Canada-United States IBET Threat Assessment 2010 (Reporting on Year 2009), <http://www.rcmp-grc.gc.ca/ibet-eipf/reports-rapports/2010-threat-menace-eng.htm#ii>.

<sup>54</sup> Stewart Bell, On the smuggler's trail: Sun Sea's Canadian connection, <http://news.nationalpost.com/2011/03/28/on-the-smugglers>, accessed on 30 September 2011.

<sup>55</sup>UNICRI and AIC, Rapid assessment: human smuggling and trafficking from the Philippines, November 1999, doc. A/CONF.187/CRP.1, April 2000.

<sup>56</sup>UNODC, Global Review and Annotated Bibliography of Recent Publications, January 2011, pp.37 – 38.

<sup>57</sup>International Organization for Migration, World Migration 2008: Managing Labour Mobility in the Evolving Global Economy, IOM World migration Report Series (United Nations publication, Sales No. e.07.III.S.8), p.216

<sup>58</sup> Janet Phillips and Harriet Spinks, *Background Note: Boat arrivals in Australia since 1976* (2011) Parliament of Australia: Parliamentary Library, [www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm](http://www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm), accessed on 9 May 2011.

by sea to Australia. Alternatively, smugglers may facilitate their entire journey including travel to Indonesia using visa and document fraud. Indonesia is an archipelago of many islands which smugglers use as points of departure for sea smuggling journeys. Smuggling vessels (most of which are fishing boats) will leave along the coast predominantly towards Christmas Island or Ashmore Reef, both of which are offshore Australian territories geographically closer to Indonesia than they are to mainland Australia.

There have also been cases of migrant smuggling by sea directly from Sri Lanka and Chennai on the eastern coast of India to Australia.<sup>59</sup> In the period of November 2008 to April 2011, 12 suspected illegal entry vessels originated from Sri Lanka and 2 from Chennai / Pondicherry.

## **2. MODUS OPERANDI**

The modus operandi employed by smugglers depends largely on the region in which it occurs, and the migrant customer who is paying for the service. In some regions, migrant smuggling by sea is a crime born of circumstance and opportunity. In other areas, the crime has evolved from smuggling of goods in previous decades to now smuggling of people where there is profit to be made. Migrant smuggling by sea can also be understood as a criminal business, which is competitively run as such. Smuggling packages offered to migrants vary from simple one-off services which comprise only the sea journey, to more complete packages of services, which cover the land or air-based legs of the journey to the coast and may even include falsified and fraudulent documents to enable the migrant's entry and/or stay in the country of destination.

It is possible that the same smuggling organizations arrange both sophisticated smuggling enterprises and cheaper and more dangerous services. A migrant with means may be provided with a boat or ferry ticket, fraudulent travel documentation and a work permit for their use upon arrival in the destination country. Meanwhile, cheaper services may be sold to poorer clients, who are hidden in containers or trucks on the same ferry at higher personal risk and with a lower chance of success. Some full-package services even provide assistance to migrants upon leaving detention centres, while others simply use smuggling services in a piecemeal fashion arranged at hubs on route.<sup>60</sup> Other migrants may use high-end travel with business class plane journeys and fraudulent documents on route to the point of embarkation for the sea component of their journey. The fact that some smugglers may be involved in the full variety of services is further borne out by the fact that smuggling, like other businesses, may involve ad hoc service providers and referrals to other operators as the need arises. Even in cheaper smuggling situations, migrants may be given the opportunity to be smuggled again at no or at low cost once the initial attempt has failed and they have been released back into circulation.

### **2.1. Actors and roles in migrant smuggling by sea**

#### **2.1.1. Profile of migrant smugglers**

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<sup>59</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.68.

<sup>60</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.71.

At a global level, the vast majority of smugglers of migrants by sea are male. Smugglers are almost always nationals of the countries from or to where the smuggling takes place.

Though the investment and resources required to carry out sea smuggling ventures seems to imply the involvement of centralized organisations, research has shown that sea smuggling is more often carried out by flexible criminal groups or individuals, operating on the basis of repeated contractual arrangements rather than in hierarchical organisations.<sup>61</sup> Like their land-based counterparts, smugglers who operate across seas are highly flexible and capable of adapting in response to changed circumstances and law enforcement measures. Obviously smuggling ventures involving a combination of land, air and sea methods involve greater operational complexity.

There are several criminals involved in a sea smuggling operation from the smuggler at the top of the enterprise who may be well connected to other criminal or state actors, and whom migrants are unlikely ever to meet. Information on those operating at the highest levels is lacking. In some places, the top level of the enterprise is occupied by entrepreneurs who may be active both in legitimate and illegitimate business, such as travel agencies or transport companies which perform both licit and illicit activities. In this respect it must be noted that in some regions there is no social stigma of criminality associated with being a smuggler. Rather, smuggling may be seen as an ordinary business providing a valuable service, conducted as a regular part of the economy.<sup>62</sup>

Some research has also shown that corrupt officials even at the highest levels of state may participate in smuggling by sea businesses, taking significant percentages of smuggling revenue. In all regions of the world, corrupt public officials include border officials, police, soldiers, immigration officials, embassy or consulate employees and port authorities who may positively facilitate smuggling or turn a blind eye to it in exchange for a bribe payment.<sup>63</sup> Alternatively, such public officials may be involved in a more direct way as organisers of smuggling ventures. Immigration agents in some countries have also been implicated in facilitating irregular migration and enabling stay.<sup>64</sup>

Organizers or coordinators oversee the entire process and have many contacts to arrange personnel, routes, modes of transportation and accommodation. A smuggling venture may be organized by one such person or by several working in cooperation with each other.<sup>65</sup>

Intermediaries or brokers may be the only contact that migrants have with smugglers, making migrants extremely vulnerable to them and with little choice but to trust them. Brokers, who are located in hubs along common migrant routes, are often of the same ethno-linguistic background as the people they recruit and may work for more than one organizer. Brokers themselves may be migrants who have become stranded and therefore must work for smugglers possibly following an unsuccessful sea-crossing which they are now trying to raise

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<sup>61</sup>UNODC, Global Review and Annotated Bibliography of Recent Publications, January 2011, pp. 78-80 and pp.95 – 98.

<sup>62</sup>UNODC, Global Review and Annotated Bibliography of Recent Publications, January 2011, pp.74 – 77.

<sup>63</sup>UNODC, Global Review and Annotated Bibliography of Recent Publications, January 2011, p.82.

<sup>64</sup>See for instance, Canadian threat assessment report, 2010, <http://www.rcmp-grc.gc.ca/ibet-eipf/reports-rapports/2010-threat-menace-eng.htm#ii>.

<sup>65</sup>UNODC, Global Review and Annotated Bibliography of Recent Publications, January 2011, p.81.

money to reattempt. Alternatively they may be nationals of countries of origin who are well established in a profitable business and therefore have no intention of migrating themselves. Both intermediaries and brokers may liaise with middlemen who create direct contacts between smugglers and migrants, and may act as guarantors by holding payment until journeys have been successful. Such middlemen may be in contact with more than one smuggler.<sup>66</sup>

Recruiters advertise smuggling services and establish contacts between smugglers and migrants and may collect the initial fee for the sea journey. Recruiters may not be affiliated with particular smugglers but work independently to provide migrants with information about smugglers and smuggling options available to them. Recruiters often live in countries of origin or transit, have working knowledge of the language of migrants and may even know them personally.<sup>67</sup>

Transporters or guides accompany migrants on different stages of the journey. Often such persons are men from border regions who have local knowledge that they provide to smugglers on an ad hoc basis. In some parts of the world, those who transport migrants may be nationals of coastal countries of origin or destination, often of a different nationality to the migrants they transport. In many countries, those who pilot boats may be fishermen who have no knowledge about migration or smuggling issues, but on an ad hoc basis they may be recruited by smugglers on the basis of their specific skills to transport migrants in distinct migrant smuggling ventures.<sup>68</sup> Additionally, there are those persons who may be involved in accommodating migrants when they are waiting for their opportunity to attempt a sea crossing. Enforcers may guard migrants in this phase, possibly threatening or using violence to keep them under control or make them pay outstanding debts.<sup>69</sup>

Spotters may be responsible for providing specific information about police, border guards, navy operations and the like, and communicate to smugglers when a possible check is to be carried out. In some parts of the world sailors of commercial ships have acted as spotters for smuggling operations, informing smugglers of where surveillance is being carried out.

Ad hoc service providers and suppliers are also involved, from owners or makers of boats who are complicit in the use of vessels for migrant smuggling, and those who harbour migrants throughout the process. Hotel, house or apartment owners or residents are particularly useful when migrants need to be gathered together prior to embarking on another leg of a journey. In particularly organised hubs, there may be several hundred people involved in a smuggling network including boat owners, boat crews, restaurant and cafe owners, telephone centre owners, policemen, businessmen, truck owners, landlords and local government officials.

Additional criminal actors involved in the smuggling process include those who provide falsified or fraudulent documents to facilitate travel through transit countries to the coast, or to enable stay once the destination country has been reached.

All of these actors may be considered 'smugglers' for the purposes of the Migrant Smuggling Protocol.

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<sup>66</sup> UNODC, *Smuggling of Migrants into, through and from North Africa: a thematic review and annotated bibliography of recent publications*, 2010.

<sup>67</sup> UNODC, *Global Review and Annotated Bibliography of Recent Publications*, January 2011, p.81.

<sup>68</sup> UNODC, *Issue paper: Transnational Organised Crime in the Fishing Industry*, 2011, p.74.

<sup>69</sup> UNODC, *Global Review and Annotated Bibliography of Recent Publications*, January 2011, p.81.

### 2.1.2. Profile of smuggled migrants

In short, generalisations about migrants using sea smuggling services cannot be made. What may be mostly true in one region or along one route, may not be true in another region or along another route. Similarly, what is true at a particular time and place may not be true at another time as push and pull factors change. The key point to emerge therefore is that profiles of migrants, their motivations and the situations that led them into the hands of smugglers can only be accurately assessed on a case-by-case basis.

#### ***Men, women and children***

Gender plays a role in irregular migration trends. More traditional societies may emphasize the economic responsibility of men, thus pressuring them to seek out a more successful life than that they can achieve in their countries of origin. Men in some cultures face extreme pressure to support the families who have pooled resources to fund their migration. Such expectations may also be placed on children, for instance in cultures where boys are treated as men with adult responsibilities from an early age.

Though the vast majority of migrants smuggled by sea are unaccompanied men, in some migrant groups, there is a noticeable increase in the number of women smuggled by sea. More often than not, women are accompanied by male relatives, though in contrast to these general trends, 30% of those crossing the notorious Gulf of Aden are women, 27% of whom travel alone.<sup>70</sup>

There are also occasional cases of women in late stages of pregnancy being smuggled by sea; some may have become pregnant during the smuggling process and this fact is taken advantage of by smugglers who know that authorities will be distracted from investigative objectives because of the need to divert attention and resources into assisting her. Smuggling of pregnant women may also be part of the modus operandi of smugglers to enable a migrant's stay in the destination country, through her child being born in the country of destination.

Despite these occurrences, it must be stressed that although there are some family groups among migrants smuggled by sea, and sometimes women or children travelling alone, the vast majority of migrants smuggled by sea are men.

#### ***Education and socio-economics***

Some research has analysed migrant profiles in respect of the means by which they are smuggled. More privileged people are able to afford all-inclusive services including falsified or fraudulent travel or identity documents, which lessen the risk to safety or of detection. Meanwhile poorer people must rely on low-cost options, which have a high rate of failure and pose a higher risk to lives and safety.<sup>71</sup> The means of transport used may also reflect on a

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<sup>70</sup>Médecins sans Frontières (MSF), No Choice: Somali and Ethiopian refugees, asylum seekers and migrants crossing the Gulf of Aden, June 2008; Mixed Migration Task Force Somalia (co-chaired by UNHCR – IOM), "Mixed migration through Somalia and across the Gulf of Aden", report, April 2008.

<sup>71</sup>Paola Monzoni, "Migration: Human Rights of Irregular Migrants in Italy", in International Council on Human Rights Policy, Migration: Human Rights Protection of Smuggled Persons, Geneva 25-26 July 2006; Ferruccio Pastore et al.,

person's incentive to leave their country of origin, sometimes little choice is available for those fleeing situations of conflict or persecution regardless of their financial resources.

Migrants smuggled by sea are generalized as young uneducated men of working age from rural locations who are more often than not poor or unskilled. Though male prevalence is true, as discussed above, other research has challenged stereotypes, finding that people of diverse socio-economic backgrounds are being smuggled, some of whom are even highly educated and/or skilled professionals with experience of living in urban areas who have few opportunities in their home countries.<sup>72</sup> In other words, migrants smuggled by sea may be so desperate that they have little choice but to leave their homes, or they may be in no particular peril but simply prefer to make a life for themselves elsewhere.

### ***Refugees and asylum seekers***

It is difficult to generalise the extent to which migrants smuggled by sea are refugees or asylum seekers. In some regions, the vast majority of those who are smuggled by sea are not in any fear of persecution, though will often make spurious asylum claims in order to avoid or delay repatriation. Meanwhile, in other regions, the majority of persons who use the services of migrant smugglers are ultimately found to be refugees. However, of those who have legitimate protection claims, it is not necessarily the case that undertaking a sea smuggling journey was their only option to claim asylum; asylum seekers may have travelled or been smuggled through several countries where they could have claimed asylum but use the services of smugglers because they prefer to choose the destination in which they seek protection.

Where people are forced to flee conflict, violence, drought and poverty and have no safe and legal alternatives to do so other than to turn to the services of smugglers to escape their country, the migratory push factors are often the same regardless of the socio-economic position and education of migrants. Those who are well-educated and economically capable are sometimes mistakenly assumed to be economic migrants who are therefore not in need of protection; however, it is not the case that wealthier persons are any less likely to face persecution than poorer ones. In the context of migrant smuggling, the relative economic status of a person being smuggled may have implications on his or her capacity to access particular smuggling services, but does not speak to his or her protection needs.

## **2.2. Journey to the coast**

### **2.2.1. Land and air travel**

The nature of the journey to reach the coast differs widely depending on the relative economic status of the migrant concerned, their motivations for fleeing, the smugglers who facilitate their journey and the region concerned. To generalise the range of experiences in this respect; some do not survive journeys that predominantly take place across long distances over land, while journeys that take place using air routes pose minimal risk to migrants' safety, simply involving travel between various international airport hubs toward the coastal country of departure.

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"Schengen's soft underbelly? Irregular Migration and human smuggling across land and sea borders to Italy", *International Migration Journal*, vol. 44 n°4 2006.

<sup>72</sup> Ahmed Icduygu, *Irregular Migration in Turkey*, IOM Working Paper No. 12, February 2003.

To illustrate the former situation, a migrant's journey from sub-Saharan Africa to the coast of North Africa may require that migrants travel by land for several weeks, months or even years before they embark on the sea travel component of their journey. Migrants have often undertaken an initial land journey to a given hub (whether it is a city, harbour or refugee camp for instance) where they may be able to find necessary infrastructure and services to support irregular migration processes, such as accommodation, forged documents, job opportunities, information exchange and contact with smugglers.

A migrant's journey to the coast may involve a perilous desert crossing, where many succumb to extreme elements. The vulnerability of migrants during this leg of their journey is significant; carrying along the money that they need for each stage of the journey makes them the prey of several predators including smugglers, bandits and corrupt border officials. Some migrants report that there are organised relationships existing between smugglers and other criminals who may exploit migrants en route across deserts. Because smuggling services are illegal, those who provide them often have tremendous power over those who enlist them; abuses are commonplace with many people dying on the journey or being abandoned without resources en route.<sup>73</sup>

The treatment by smugglers of migrants throughout the different stages of the journey can reach criminal assault, with violence and intimidation both threatened and used including acts of rape, torture and murder.<sup>74</sup> Women are particularly vulnerable to systematic rape or assault by smugglers or others they meet en route. While there are smugglers who are less draconian than others, these are generally the exception to the rule of smugglers who deceive and mistreat migrants. Trust relationships are generally built on language ties between smugglers and migrants, but notwithstanding this, the irregular status of migrants, their lack of information and alternative options, means that they are particularly vulnerable to the whims of smugglers and have very little power to negotiate or determine the conditions of the journey, or insist upon the terms initially agreed to. Their irregular status also makes them unlikely to seek assistance of law enforcement authorities in the event that crimes are committed against them.

Contrasted with these extreme experiences of reaching the coast, in other regions, migrants who are more economically empowered to afford a higher level of smuggling services will experience no particular hardship. For instance, a departure from an Indonesian Island towards Australian territory may follow land and air travel from origin countries such as Iraq and Afghanistan, through various international air hubs to arrive in the departure country of Indonesia. The route taken will depend on various factors, and may for instance be determined by whether visas are needed for particular routes. The same may be true of travel to Turkey as a transit country for being smuggled into the European Union. In all cases, there is no one particular route taken, but several different journeys which are often circuitous and frequently change to avoid detection.

### **2.2.2. Recruitment**

Migrants and smugglers by sea usually come into contact with each other in major hubs along migration routes. This is particularly true in African hubs, where recruitment of migrants by

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<sup>73</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 2, Smuggling of Migrants, p.55.

<sup>74</sup> UNODC, Global Review and Annotated Bibliography of Recent Publications, January 2011, pp.74-77.



smugglers may take place in the open places like railway stations, bazaars, beaches, bars, markets or coffee shops, or even in proximity of national embassies.<sup>75</sup> Smugglers may also promote their services in the same way that legitimate businesses do through newspaper advertisements, internet and social networking media, travel agents and through word of mouth.<sup>76</sup>

In some instances, smugglers may actively recruit migrants by providing them with incorrect information about employment prospects in the destination country, the ease of regularization and the conditions of the sea journey.<sup>77</sup> Migrants may for instance be shown a photo of a large boat in good condition presented as that which they will travel with, only to be then forced onto a small, dilapidated boat. Recruiters may also tempt persons into migrating to places far away, though they otherwise had no intention of doing so. Such recruitment may occur in migrants' countries of origin.

In some situations, a smuggler will be based in a country of transit. When he procures a boat he then recruits the appropriate number of migrants to smuggle; such persons may already be waiting in the country of transit but the smuggler may need to additionally recruit people in countries of origin to fill the vessel. Alternatively, he may have recruited a number of migrants wanting to undertake a sea journey and then need to procure the appropriate vessel.

Migrants must place significant trust in smugglers before they embark on their journey, meaning that smugglers' reputations may be decisive factors in choosing them.<sup>78</sup> Judgement about smugglers may be based on what a would-be migrant hears about them through social networks of friends, family and acquaintances.<sup>79</sup> Given the relatively disempowered position of migrants to negotiate with smugglers and the vulnerability they will experience en route, the smuggler's reputation is of key importance particularly in respect of full-service packages that also encompass land and sometimes air journeys towards the coast of departure.

### 2.2.3. Safe houses

Migrants wanting to cross a sea by boat may be crowded into 'safe houses' where they must wait for a period of hours, days, weeks or even months before they are able to embark on their sea voyage. The time between arriving in the coastal country and departing on a smuggling vessel can vary significantly depending on who is being smuggled and who is smuggling them. In some regions (such as the Caribbean islands), migrants may already be close to the coast and independently travel to coastal departure points when smugglers instruct them to do so. In other smuggling processes, smugglers may contact migrants who are still in countries of origin or transit, instructing them to make their own way (often via air) to the coastal country within

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<sup>75</sup> See for instance, UNODC, *Global Review and Annotated Bibliography of Recent Publications*, January 2011, p.102.

<sup>76</sup> Andreas Schloendhardt, *Organised Crime and Migrant Smuggling: Australia and the Asia Pacific*, Australian Institute of Criminology, Research and Public Policy Series, No. 44, p.39.

<sup>77</sup> See for instance, Andreas Schloendhardt, *Organized Crime and Migrant Smuggling: Australia and the Asia Pacific*, Australian Institute of Criminology, Research and Public Policy Series, No. 44, p.39.

<sup>78</sup> Veronika Bilger et al., "Human smuggling as a transnational service industry", *International Migration* vol.44 n°4 2006.

<sup>79</sup> Khalil Koser and C Pinkerton., "The social networks of asylum seekers and the dissemination of information about countries of asylum", Home Office, London, quoted in Ilse Van Liempt, "The social organization of assisted migration", IMES, Institute for Migration and Ethnic Studies, Amsterdam, paper presented at the 8th Metropolis Conference in Vienna, September 2003, p.6.

the next days as the vessel will be ready for them within a week. This has been found to be the case for financially empowered migrants from Iraq smuggled to Australia via Indonesia. Meanwhile, less financially empowered migrants from Afghanistan for instance, may have to wait in Indonesia for some time before smugglers manage to procure a vessel for their voyage. In other regions, the waiting time may be significantly longer. Migrants travelling from Sub-Saharan Africa to North Africa often must wait in coastal countries of departure for several months to raise enough money for their passage to Europe and to wait in safe houses for the right conditions to depart. Such places of accommodation may be located on the outskirts of towns near to seafront departure points, though this is not always the case; there have been reports of safe houses many hours away from points of departure for boats.

Poorer migrants are particularly vulnerable when they must remain in safe houses for long periods of time. Migrants may be reliant on middlemen to liaise with the organization arranging the next leg of the journey. In some places, migrants may be free to come and go from the safe house while in others they may be entirely confined and mistreated, sometimes even with armed guards to maintain order and protect secrecy. Generally order is kept inside safe houses by nationals of the country in which the safe house is located, but migrants might themselves do this job for a period of time to earn money for their journey. This exploitative relationship is exacerbated when migrants must pay back 'debts' to smugglers for their food and board (sometimes at inflated prices), which may leave little choice but to work for smugglers in order to repay their debt and continue their journey. Such work may entail drug smuggling or even performing roles in the migrant smuggling business itself, for instance by recruiting other migrants.

## **2.3. The sea journey**

### **2.3.1. Embarkation and departure**

When smugglers determine that the time is right, migrants may be taken down to departure points in cars, closed vans, buses or trucks, generally during the night to avoid detection. Depending on the location, migrants may even be able to walk to the departure point in small groups so as to not attract attention. Depending on the region, route and vessel used, the vessel may be brought down to the coast in a container that the migrants themselves carry to the sea. At this point, brokers who have collected money from migrants may pass the money onto the boat owners, minus their commission.

Usually at the point of embarkation, mobile phones, belts, cigarettes and other items such as passports and other identity documents are taken away from migrants, generally so they cannot be linked to smugglers upon interception. There have been some incidents in which fraudulent documents have been found on migrants smuggled at sea, intended for use in onward travel or to facilitate their irregular stay in countries of destination. Depending on what is convenient for smugglers, family groups may be put on the same boat or separated to discourage them from cooperating with authorities upon interception, which could compromise the journey of their family members.

Smugglers often carefully choose migrants they send on boats according to their nationality. Some boats may transport passengers of only one nationality, while on other boats there may be as many nationalities as there are passengers. For instance, people from countries with

bilateral agreements with the destination country have a higher chance of being repatriated as soon as they land. Migrants who have a higher chance of being accepted as asylum seekers in the destination country or who have come from faraway origin countries to which repatriation would be extremely expensive, may also be selected to undertake the sea journey.<sup>80</sup> Also as mentioned above, as part of their modus operandi to enable the stay of migrants in the country of destination smugglers may opt for certain profiles such as unaccompanied children and pregnant women.

Because smuggling fees for the sea crossing are often paid to brokers in advance of time spent waiting in safe houses, migrants will have no control over their time of departure. If a migrant chooses not to travel (for instance, because they are concerned that the journey will be too dangerous because of the conditions at sea and/or the state of the vessel) they will either be forced to continue with the planned journey or be allowed to stay behind but forfeit the money they have paid.

### 2.3.2. Transport and Equipment

There are several methods of smuggling migrants by sea, with boats of all types and sizes being used to commit the crime. In some countries, boats of only a handful of passengers are commonly intercepted, while in other countries, vessels of several hundred people have been used. Generally the choice of vessel will depend on the resources available to migrants to fund their passage, as well as the types of vessels provided by smugglers and the length of the journey. The choice of vessel used also changes according to their availability at a given time and place.

A typical method of smuggling migrants at sea is to use two vessels. The larger vessel, such as a fishing trawler or cargo ship, will carry the migrants on open ocean voyages to a predetermined location on the high seas where they will transfer to a small boat for the transit to a landing site. At that point, the boat crew and smugglers abandon the migrants and return to the point of embarkation in the second vessel.<sup>81</sup> Another system involves using small vessels to transport migrants to a larger waiting vessel, such as a fishing trawler or cargo ship, which will undertake the ocean voyage.<sup>82</sup> Migrants may alternatively be disembarked on an off-shore island where they wait for the arrival of another vessel on which to continue their journey.<sup>83</sup> A less typical method of smuggling migrants by sea is the ad hoc recruitment of professional fishermen who use their own boats to transport migrants out to sea where they are then transferred to smaller vessels and left adrift to be intercepted, while the fishermen returns to the coast of departure.<sup>84</sup> Finally, a method used in large-scale smuggling ventures is for several vessels to depart the

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<sup>80</sup> Paula Monzoni, "Migration: Human Rights of Irregular Migrants in Italy", in International Council on Human Rights Policy, *Migration: Human Rights Protection of Smuggled Persons*, Geneva 25-26 July 2006, p. 15.

<sup>81</sup> See for instance, Andreas Schloenhardt, *Organized Crime and Migrant Smuggling: Australia and the Asia Pacific*, Australian Institute of Criminology, Research and Public Policy Series, No. 44, p.51.

<sup>82</sup> See for instance UNODC Issue Paper: *Transnational Organized Crime in the Fishing industry*, 2011, pp.67-68.

<sup>83</sup> See for instance, Andreas Schloenhardt, *Organized Crime and Migrant Smuggling: Australia and the Asia Pacific*, Australian Institute of Criminology, Research and Public Policy Series, No. 44, p.51.

<sup>84</sup> UNODC Issue Paper: *Transnational Organized Crime in the Fishing industry*, 2011, p.62, referring to Monzini 'Il traffico di migranti per mare verso l'Italia. Sviluppi recenti (2004-2008)' 43 *Working Papers Centro Studi di Politica Internazionale* (2008) 33.

coast of origin simultaneously with the intention of saturating operational resources of the recipient coastal state.

In some instances, migrants can be concealed on commercial boats or ferries or even cargo ships. Speedboats, sailing boats, motor yachts and small inflatable rubber boats may be used. Fibreglass boats have also been used, though in some regions have largely been replaced by rubber dinghies. Some smuggling organisations even have the means to build their own boats for one-time use. The use of sailing yachts or speedboats is less common given the higher cost of the smuggling operation both for the smuggled migrant and the smuggler; if such boats are damaged or intercepted and seized the cost to the smuggling network is significant. For this reason, often smugglers with skills in driving a boat in high seas will be on board to sail more expensive vessel, which may have been bought with money made from other illegal businesses such as drug trafficking and registered to lower-level criminals who have no criminal records. However, in some countries (such as the United States of America) boats may have been stolen and therefore do not cost smugglers anything in the event that they are intercepted or damaged. Use of stolen boats is often an effective strategy in smuggling at sea; where speedboats or yachts are stolen from coastal ports in countries of destination, it is difficult for authorities to detect them when they merge with legitimate sea traffic after having collected migrants from points of origin or transit. Generally vessels are simply owned by smugglers who continue to reuse them for smuggling purposes so long as they are not forced to abandon them due to law enforcement presence or the deteriorating condition of the vessel.

In other regions, such as North Africa, organisers buy boats from fishermen for use in smuggling ventures, sometimes paying up to twice the value of the boat. There have also been incidents of boats being stolen from fishermen who refuse to sell. Fishing boats are often passed down through generations as the source of income for a family; in towns where boats are lost to smuggling ventures, fishermen themselves become vulnerable to smugglers as either captains of smuggling vessels or as migrants given smugglers have deprived their family of its livelihood.<sup>85</sup>

On the eastern Mediterranean Sea route authorities have reported a shift from the use of makeshift vessels for short crossings to the use of larger vessels such as sail boats or merchant ships offered by criminal organisations.<sup>86</sup> In contrast, on the western Mediterranean Sea route from Northern Africa to Spain, irregular migrants have been detected using less sea-worthy vessels such as jet-skis and inflatable dinghies, at risk to their lives. Such methods are generally used for shorter crossings, such as between Morocco and the southern coast of Spain, between Tunisia and the Italian islands of Pantelleria and Lampedusa, as well as between the Turkish coast and the Greek Islands of the Aegean Sea, where distances between shores can be less than one kilometre.<sup>87</sup> More commonly, migrants may be smuggled on old and deteriorated wooden fishing vessels, which have been procured by smugglers for the purpose. Vessels may be largely rotten and not sea-worthy. Such vessels have been particularly noted in smuggling

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<sup>85</sup>See for instance, Marine Olivesi, 'Fishermen lose boats to migrants', *The World*, 18 April 2011, <http://www.theworld.org/2011/04/tunisian-fishermen-lose-boats-to-migrant/>, accessed on 5 October 2011.

<sup>86</sup>FRONTEX Annual Risk Analysis 2011, Warsaw April 2011, p.29.

<sup>87</sup>FRONTEX Annual Risk Analysis 2011, Warsaw April 2011, p.30.

from West Africa and Morocco to Spain and from Libya to Italy. Similar vessels are also used to smuggle migrants to Australian off-shore territories.<sup>88</sup>

While inflatable boats are also a popular means of transportation, the advantage of wooden fishing vessels is that they can carry several hundred people whereas inflatable boats can carry only around twenty.<sup>89</sup> In some parts of the world high demand for smuggling services and high profits for the smugglers who provide them has created an increased market demand for old boats and other key equipment. In some regions, smugglers are reported to pay almost twice the market rate for a fishing boat given the profit they will make from cramming large numbers of migrants on board.<sup>90</sup>

Additional reasons for the use of fishing vessels in smuggling operations is that depletion of fish stocks has led to an oversupply of fishing vessels which are therefore available for smugglers to procure for their operations. Beyond their easy availability, fishing vessels are less likely to raise suspicion given that there is a legitimate reason for this type of vessel to be out at sea.<sup>91</sup> Finally, fishing vessels often do not require registration domestically or internationally, and are not required to have satellite or other tracking systems on board, meaning that smugglers can use them with very little risk of being connected to them.<sup>92</sup> Where vessels are unseaworthy and not intended for reuse, there is no risk to the smuggler in assigning an unskilled person, possibly even a migrant, to captain and navigate the boats. Fishing vessels used to transport migrants generally end up at the bottom of the sea and were never intended for use in more than one journey.

Equipment on board may include navigational items such as a GPS or compass though these are generally discarded into the ocean upon interception. Mobile phones and satellite phones are generally thrown overboard. Depending on the cost of the smuggling journey to the migrants, the level of organisation of the smugglers involved, and the vessel used, migrants may or may not be provided with life vests, and/or other safety items. For instance, where stolen luxury boats are used to smuggle only a few people, life vests may already be on board the stolen vessel. Conversely, in situations of overcrowded sub-standard boats, there may be no lifejackets on board. The level of safety equipment provided along a given route sometimes depends on the origin country and economic capacity of the migrant and the journey they are undertaking. For instance, Somali migrants who have financial systems in place en route to protect themselves against exploitation from smugglers, will also often be provided with life jackets during the sea crossing, while West Africans for instance will not. There is also evidence to suggest that where smugglers are smuggling people of their own nationality, they take more care of the safety of those people than they do for people of other nationalities. Generally the extent to which migrants' safety is a consideration depends on the decency or not of the individual smugglers involved.

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<sup>88</sup> UNODC, Transnational Organized Crime Threat Assessment, 2010, Chapter 3, Smuggling of Migrants, p.70.

<sup>89</sup> UNODC Issue Paper: Transnational Organized Crime in the Fishing industry, 2011, p.62.

<sup>90</sup> STATT Consulting, Synapse May 2011, Issue 4, *The Next phase of migration to Europe from Tunisia and Libya*, p.22.

<sup>91</sup> Discussions at UNODC Expert Group Meeting on Smuggling of Migrants by Sea, 13 – 15 September 2011, Vienna, Austria.

<sup>92</sup> UNODC Issue Paper: Transnational Organized Crime in the Fishing industry, 2011, p.72.

### 2.3.3. Piloting the boat

There are different opinions and understandings as to whether migrants or smugglers pilot vessels. Some practitioners believe that pilots on board boats are almost always smugglers given that it would be impossible for a non-seafarer to pilot a vessel and navigate it towards a precise destination in an open sea. Others point to the fact that a person having seafaring skills, does not necessarily mean that he is not also migrant. Indeed in some regions, boats are considered to almost always be piloted and/or crewed by migrants themselves. Therefore, it is only possible to generalise as to who captains smuggling vessels to the extent of noting that sometimes smugglers will pilot and crew boats, while in other situations migrants may pilot vessels and yet be prosecuted for smuggling-related crimes. It is also important to stress in this regard that even where there is no smuggler on board, the situation can still be one of migrant smuggling by sea owing to the fact that the journey has been facilitated by smugglers.

Some research has found that where smaller vessels or rubber boats are used, a migrant will often be tasked to drive. Sometimes the captain is chosen from among migrants by the smugglers, and then instructed how to drive the boat. Such instruction may only last a couple of hours not far in advance of the actual journey. Sometimes a person may be selected on the basis of his skills, while in other situations the migrant may have no boat skills but only claim to so as to be able to travel for free or for a reduced price. His incentive for undertaking the role may be financial, in that his smuggling fee is waived or he is given additional money for assuming the task, or he may be entitled to bring another one or two people on the journey without a fee to assist him in his role.

Sometimes the 'captain' is an experienced fisherman or seafarer who has been recruited by the smuggler specifically for his skills; the smugglers may even have tested his capabilities before the journey is undertaken. In regions where fishermen are recruited by smugglers for the seafaring skills and their knowledge of particular waters and land masses, the smuggler will sometimes offer the fisherman more money to transport a group of migrants than he could possibly make otherwise. Persons who are tempted into accepting such an offer may or may not know of the risk they incur and the illegality of what they are being asked to do, but it is clear that the smugglers pass the risk of prosecution on to those they recruit.

In many regions, there have been situations of minors being used to captain the boats so as to avoid prosecution upon interception, though this is not always the result. Often the boat will be piloted by an adult and a child only placed at the helm when rescue services are spotted or where the vessel is approaching its destination.

### 2.3.4. Conditions at sea

Depending on the places of embarkation and destination, the boat journey can last anywhere between 2 hours or 30 days. There are smuggling sea journeys that are relatively safe and comfortable for passengers, for instance where the sea is calm, where the distances are short and where the vessel is equipped with enough food and water supplies to make the journey comfortable. In some limited smuggling by sea journeys, migrants are provided with life vests and have adequate space in which to be comfortable for the duration of the journey. Where smugglers use luxury yachts to commit their crimes, passengers are generally comfortable. Where conditions at sea and on board are reasonable, migrants may have a pleasant journey from coastal countries of origin to the coastal country of destination. Indeed, in some cases

investigators have uncovered evidence of migrants capturing their journey with video and still cameras as they would document recreational travel.

However, for the majority of migrants, the journey can be harrowing. Many survivors talk about rough conditions, cold, the overpowering smell of fuel, the scarcity of food and water. Conditions may be so crowded and seas so rough that people fall into the water. The lack of hygiene on board can result in the spread of disease via faeces, urine and vomit. While violent means of control of passengers is not used in all journeys, there have been reports of smugglers on board being violent towards passengers. Physical and sexual assault has been reported on some journeys, as have acts of homicide with instances of people, including children, being thrown overboard.<sup>93</sup> Survivors of sea crossings can be left traumatised by their experience; some come close to dying in the course of their journey and are exposed to conditions and treatment that demonstrates that smugglers value profit over human life.

### **2.3.5. Arrival or interception**

There are two modus operandi used when approaching coast of destination. One aims to reach land by evading detection by authorities by using fast boats and/or travelling at night where detection is more difficult. Such a method is typical from Turkey towards Italy and Greece, from Comoros to Mayotte, from Somalia and Djibouti to Yemen and from Bahamas to the United States. The second method aims to be detected and intercepted or rescued by authorities in territorial waters of destination coastal countries. This method is the norm from North Africa to Europe, from South and South East Asia to Australia.

#### ***Evading detection***

Where the objective is to evade detection, the sea journey may cease during the day, and blue tarp be put up to cover the vessel so air surveillance cannot detect it in the vast blue of the ocean. At night the journey will continue towards coasts where there is little surveillance. Alternatively for shorter journeys, small, fast boats may be used to reach the coast of destination, with smugglers simply blending in to sea traffic at coastal ports, dropping migrants off and returning to the origin coast. In situations where boats have been stolen from coastal towns of destination, it may be difficult then to detect them. Such vessels may be able to evade detection through speed and the ease with which they can be manoeuvred to avoid any surveillance that is spotted.

In some regions, migrants will be instructed to disembark the vessel tens or hundreds of metres from the shore so the vessel can depart without being detected. Some migrants are unable to swim, and indeed many have never seen an ocean before, meaning that this modus operandi can result in death.

In the event that vessels are detected and intercepted, migrants will often have been instructed by smugglers to say nothing to authorities. They will simply wait to be returned to their country of origin where they will re-enter the smuggling cycle and embark on another attempt. In some

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<sup>93</sup>Médecins sans Frontières (MSF), No Choice: Somali and Ethiopian refugees, asylum seekers and migrants crossing the Gulf of Aden, June 2008; Mixed Migration Task Force Somalia (co-chaired by UNHCR – IOM), “Mixed migration through Somalia and across the Gulf of Aden”, report, April 2008, p. 4.

smuggling ventures, a cost-free reattempt is promised in exchange for migrants saying nothing to authorities.

### ***Seeking detection***

Upon interception by authorities, mobile phones, GPS and any other equipment allowed on board to navigate the sea journey will be thrown overboard. Before doing so, smugglers or others on board or on land may call the coast guard with a satellite mobile phone, telling authorities to rescue persons on board boats.<sup>94</sup> A frequently reported modus operandi put in place upon interception is for smugglers or migrants to force a rescue by sinking or scuttling boats. Rubber dinghies for instance may be punctured so authorities are forced to assume responsibility for persons in the water. Wooden vessels may be set alight to ensure that authorities assist persons on board, sometimes motivated by the perception that intercepted vessels will be turned back otherwise. In other situations where passengers on vessels are attempting to evade detection, there have been a few instances of persons on board threatening to throw babies or small children overboard, or threatening or committing self-harm if authorities board the vessel.

Smugglers are generally well-informed about a state's protection obligations and act to exploit them. For instance, sometimes smugglers will coach migrants to claim asylum upon interception and instruct them of which nationality they should claim in doing so. Alternatively, migrants will be told not to claim asylum upon interception, because after they have reached the coastal state, they intend to continue their journey to another preferred destination country (either independently or facilitated by smugglers) where they will seek asylum or otherwise try to remain in the country.

### **2.3.6. Deaths at sea**

The United Nations High Commissioner for Human Rights stressed that “[t]here is no doubt that ruthless people smugglers bear much of the blame for the thousands of deaths that occur each year in the Mediterranean, the Gulf of Aden, the Caribbean, the Indian Ocean and elsewhere.”<sup>95</sup>

While the total number of deaths that occur among migrants trying to cross the seas from Africa to Europe is unknown, an estimated 1000 people lose their lives each year.<sup>96</sup> The International Catholic Migration Commission puts the number higher, reporting that 2000 people lost their lives in the first months of 2011.<sup>97</sup> In May 2011 for instance, 61 people died of dehydration and starvation on board a boat in the Mediterranean Sea.<sup>98</sup> In Asia, while the numbers of people trying to reach Australia are lower than those trying to reach Europe, there have been a

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<sup>94</sup> Council of Europe: Parliamentary Assembly, *Europe's 'boat people' mixed migration flows by sea into southern Europe*, 11 July 2008, Doc. 11688 available at <http://www.unhcr.org/refworld/docid/487c61f616.html>.

<sup>95</sup> Navi Pillay, United Nations High Commissioner for Human Rights, *Migrants at sea are not toxic cargo*, 9/5/2009, <http://www.abs-cbsnews.com/views-and-analysis/09/04/09/migrants-sea-are-not-toxic-cargo-navi-pillay>.

<sup>96</sup> See for instance ICMPD and Fortress Europe and United.

<sup>97</sup> ICMC, 'Mayday! Strengthening responses of assistance and protection to boat people and other migrants arriving in Southern Europe', September 2011, p.4. This ICMC report also notes Fortress Europe figures which suggest that 1931 immigrants lost their lives in the Mediterranean Sea in the first seven months of 2011. (See p. 43).

<sup>98</sup> See for instance Jack Shenker, 'Aircraft carrier left us to die, say migrants', *The Guardian*, 8 May 2011, <http://www.guardian.co.uk/world/2011/may/08/nato-ship-libyan-migrants>, accessed 21 October 2011.



significant number of deaths; in 2001 more than 350 lives were lost in one incident when an unseaworthy vessel sank off the coast of Java, Indonesia headed for Australia.<sup>99</sup> In December 2010, 50 lives were lost when vessel crashed on rocks at the offshore Australian territory of Christmas Island. In general, it is not in the interests of smugglers by sea to treat passengers badly given that their businesses rely on word of mouth from satisfied customers. However, those smugglers facilitating passage across the Gulf of Aden are exceptions. As mentioned above, the conditions of travel across the Gulf of Aden are so severe that the journey is estimated to have a mortality rate of 5%. The causes of death in this situation are reported to be lack of food and water, as well as drowning and severe beatings or murder by smugglers who have thrown people overboard. Suicides along this route have also been reported.<sup>100</sup> Causes of death cannot always be established given that some bodies are never found.

While the total number of deaths of smuggled migrants at sea is not known, the number is believed to be increasing.<sup>101</sup> A key reason for this is widely considered to be the result of a low-cost segment of the migrant smuggling market expanding as push factors give people incentive to leave their homes, and border controls are strengthened in countries of destination. As immigration channels become more limited, more people turn to smugglers for assistance, who endanger lives and safety of migrants in their increasingly risky efforts to circumvent border controls.<sup>102</sup> Added to this are reports of both state and private vessels failing to rescue migrants in distress at sea despite being in a position to do so.

In short, it is the modus operandi of smugglers that is directly to blame for deaths of migrants smuggled at sea. Smugglers may use boats and engines that are unseaworthy, sinking without the means for passengers to signal for help. Boats are often overcrowded and their passengers may not be provided with life vests. Alternatively, accidents can happen when smugglers send migrants on sea journeys in bad weather conditions; boats have been torn apart on rocks and passengers thrown into rough waters. Another contributing factor to the loss of lives at sea is the lack of Emergency Position Indicating Radio Beacons (EPIRBs); a life-saving piece of equipment rarely carried on smuggling vessels. Methods to force authorities to act can endanger lives, for instance, where boats are sabotaged so as to force rescue. Some such attempts can go wrong, for instance, when people drown as an inflatable vessel is punctured or when an attempt to set fire to a wooden vessel goes wrong, resulting in an explosion that

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<sup>99</sup>See for instance 'Hundreds drown off Java', <http://news.bbc.co.uk/2/hi/asia-pacific/1614352.stm> 22 October 2001, accessed 25 October 2011.

<sup>100</sup>Médecins sans Frontières (MSF), No Choice: Somali and Ethiopian refugees, asylum seekers and migrants crossing the Gulf of Aden, June 2008; Mixed Migration Task Force Somalia (co-chaired by UNHCR – IOM), "Mixed migration through Somalia and across the Gulf of Aden", report, April 2008, p. 4.

<sup>101</sup> See for instance, UNODC *A Global Review and Annotated Bibliography of Recent Publications*, January 2011, p.27 and Council of Europe: Parliamentary Assembly, *Europe's 'boat-people' mixed migration flows by sea into southern Europe*, 11 July 2008, Doc. 11688, available at <http://www.unhcr.org/refworld/docid/487c61f616.html>.

<sup>102</sup> See for instance, Nicholas An Hear, "I went as far as my money could take me: conflict, forced migration and class", Working Paper n°6, COMPAS, University of Oxford 2004 and Council of Europe: Parliamentary Assembly, *Europe's "boat people" mixed migration flows by sea into Southern Europe*, 11 July 2008, Doc. 11688, available at <http://www.unhcr.org/refworld/docid/487c61f616.html>, accessed on 7 September 2011.

costs people their lives. Indeed, in 2009 in Australia, an explosion on board a vessel in an attempt to set it alight resulted in loss of 5 lives and injuries to 40 people.<sup>103</sup>

It is important to note that many migrants who are smuggled at sea cannot swim and may never even have seen an ocean before they embark on their journey. There are examples from all regions of the world involving migrants drowning at sea. In one instance, a migrant had survived an arduous smuggling journey through several transit countries over several months, only to drown in shallow waters a few metres off the coast of the destination country.

## 2.4. Fees, payments and profits

### 2.4.1. Fees

As with all types of smuggling, costs vary considerably depending on the type of vessel used, the guarantees and other services included as part of the smuggling package, the safety of the journey, and whether the journey is to be carried out at once or in stages.<sup>104</sup> Where a person is paying for a full package from outside the destination region, including air and land as well as sea travel, costs can be significant – particularly where fraudulent or falsified documents are provided. Fees paid for distinct smuggling segments vary enormously, even along the same route, generally coming down to what a given migrant can afford to pay.

Smuggling fees may be many times more than a migrant's annual income.<sup>105</sup> Where smugglers demand payment upfront, migrants may need to call extensively upon family resources which can decrease the economic health families and communities and in turn increase the desperation of migrants to reach their destination and not to return home.<sup>106</sup> It is common for migrants to have to sell their property or other assets in order to afford the smuggling fee.<sup>107</sup> While not necessarily poor, migrants may have to borrow heavily against the expectation of future earnings; debtors may be friends or family who are equally poor and invest all their resources in the hope of receiving remittances.<sup>108</sup> Alternatively, money may be provided by friends or relatives who are already established in the destination country. The result is that money is diverted from families into the hands of organised criminals, resulting in economic disempowerment of communities, and fuelling of crime. At a more individual level, all the money borrowed represents money that migrants will have to pay back. Their desperation to do so and their disappointment as to the nature and length of the journey and the limited employment options available to them throughout it can expose migrants to the temptation of illegal activities (often offered by smugglers) in order to pay off their debts. The situation of debt may also coerce migrants to undertake dangerous journeys at sea, because they feel that their only option is to continue forwards; going backwards may no longer be an option.

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<sup>103</sup> See for instance, Larine Stratham, 'Salute' before fatal boat explosion, <http://www.theage.com.au/national/salute-before-fatal-boat-explosion-20100128-n1pm.html>, 29 January 2010, accessed on 21 September 2011.

<sup>104</sup> UNODC, *Global Review and Annotated Bibliography of Recent Publications*, January 2011, p.104.

<sup>105</sup> UNODC, *Transnational Organized Crime Threat Assessment*, 2010, Chapter 3, Smuggling of Migrants, p.56.

<sup>106</sup> STATT Consulting, *Synapse* May 2011, Issue 4, *The next phase of migration to Europe from Tunisia and Libya*, p.3.

<sup>107</sup> KOSER Khalil, "Why Migrant smuggling pays", pp. 3-26 in *International Migration* vol. 46 n°2, 2008, p. 13.

<sup>108</sup> UNODC, *Transnational Organized Crime Threat Assessment*, 2010, Chapter 3, Smuggling of Migrants, p.56.

It is interesting to note that while smuggling fees are often standardized, in some regions they differ depending on the nationality of the migrant concerned, with some nationals being charged significantly more than others for the same sea journey.<sup>109</sup> It has also been reported that some women pay more than their male counterparts; reasons for this are yet to be fully understood but some speculate that their particular vulnerability puts them in a relatively weak bargaining position.<sup>110</sup> There may also be cost implications with respect to the sea journey itself; a life jacket for instance may be provided to those who can afford to pay extra.

#### 2.4.2. Payments

There are situations in which agents in countries of transit or destination act as financial brokers for smuggling operations. An agent may receive money through an international money transfer agent, charging a percentage for his or her services. This money will then be transferred back to the smugglers by another agent who physically travels to the country of origin and conveys the money to the migrants to pay their smuggling fees.

Some migrants protect themselves against risks during their journey by having money sent to them at various points or by relying on informal banking systems (known as *hawala* in many countries), whereby a trusted person acts as a guarantor who will authorize payment of the money once he or she is informed that the migrant has safely arrived at a given point along the journey or survived a sea crossing.<sup>111</sup> In this way migrants have a level of protection during their smuggling journey and smugglers are able to more easily hide the financial elements of their crimes. Such systems run parallel to legitimate systems and are often organised along ethnic lines. The complexity of these systems highlights the need for international cooperation to follow money to smugglers, and potentially confiscate their assets to disrupt their continued commission of crimes. In other situations, a relationship of trust exists between the migrant and the smuggler, in which the latter has business incentive to respect terms of the agreement even where payment is made in advance, so as to attract future customers.

Another consideration is that some migrants may pay for their journey in kind. Where a migrant is recruited to work for the smuggler by recruiting others to undertake the journey or performing some other generally illegal activity, he may be able to travel for free and/or bring another person on the journey. This issue has been touched upon above in respect of migrants captaining smuggling vessels. There are also incidents of smugglers receiving material benefits in lieu of payment. For instance, male migrants may carry drugs on their journey and female migrants may provide sexual favours to smugglers in lieu of paying for their journey. Though no money has changed hands in such situations, the crime would still be one of smuggling for the purposes of the Migrants Smuggling Protocol, which requires financial *or material* gain.

#### 2.4.3. Profits

The nature of the crime and its relationship with smuggling of migrants by land and by air, means that it is a successful crime type that yields high profits for smugglers with all the risks

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<sup>109</sup>Hein de Haas, "Irregular Migration from West Africa to the Maghreb and the EU: An overview of recent trends", IOM Research Series n°32, 2008, p.18.

<sup>110</sup> UNODC, *A Global Review and Annotated Bibliography of Recent Publications*, January 2011, p.111.

<sup>111</sup>For more information about 'hawala', see Module 4, UNODC Basic training manual on investigating and prosecuting the smuggling of migrants, 2010.

being borne by migrants. The logistical simplicity of migrant smuggling by sea can mean significant profits for smugglers involved. Even at the low-cost end of sea smuggling market, low risk of detection for smugglers, combined with a high number of people who can be smuggled at once, and the lack of need for falsified or fraudulent documents, means that profits are relatively high.<sup>112</sup> Depending on a person's role in the smuggling business, he or she will receive a set amount per migrant smuggled, or a commission on the money paid.

In other words, smugglers minimise their risks and maximise their profits, sometimes at the expense of the success of the undertaking and the safety of migrants. For instance, even at the low-cost end of the sea smuggling market, profits can be maximised by increasing the number of persons smuggled on a particular boat. One boat containing hundreds of people all paying minimal amounts can add up to a significant profit for smugglers whose costs are minimal. As mentioned in 2008 alone, smuggling migrants from Africa to Europe grossed around USD\$150 million for perpetrators of the crime.<sup>113</sup> Therefore, while migrants may be economically ruined as a result of smuggling attempts, the profit margins for smugglers can be significant.

### **3. RESPONSE and CHALLENGES**

#### **3.1. Encountering migrant smuggling at sea**

Articles 7 to 9 of the Migrant Smuggling Protocol are specifically concerned with smuggling of migrants by sea.<sup>114</sup> These provisions should be read in the context of the international law of the sea, in particular the 1982 United Nations Convention on the Law of the Sea (UNCLOS Convention). The UNCLOS Convention contains the general principle of international law that ships have the nationality of the State whose flag they are entitled to fly (Article 91(1)). This principle is reflected in the UNTOC provision that establishes jurisdiction in respect of offences committed on board a vessel flying the flag of the State (UNTOC, Article 15). Ships are subject to the exclusive jurisdiction of the flag State on the high seas, other than in exceptional cases provided for in treaties and under the UNCLOS Convention (Article 92(1)). The flag State has a duty to exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag (UNCLOS Convention, Article 94).

##### **3.1.1. Detection**

Detecting migrant smuggling situations is challenging even on land. In respect of smuggling of migrants by sea, it must be borne in mind that some 70% of the earth's surface is covered by ocean, making detection of a smuggling vessel extremely difficult. Where authorities of a coastal country of departure inform authorities in the destination country that a vessel has left its shores, in a vast ocean it is still not always possible to locate the vessel in question.

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<sup>112</sup> See for instance, Andreas Schloenhardt, *Organized Crime and Migrant Smuggling: Australia and the Asia Pacific*, Australian Institute of Criminology, Research and Public Policy Series, No. 44, p.39.

<sup>113</sup> UNODC, *Transnational Organised Crime Threat Assessment*, 2010, Chapter 3, Smuggling of Migrants, p.76.

<sup>114</sup> See Annex – Migrant Smuggling Protocol Extracts.

Sometimes boats carrying migrants are spotted by private vessels, the captains of which may inform coastal states. The location of smuggling vessels may also be reported by smugglers themselves as a part of their *modus operandi*. Alternatively smuggling vessels may be detected by sea and/or air patrols. In most countries, this patrolling function is performed by the navy, coast guard, police and surveillance teams in whose jurisdiction the particular area falls.

Limited maritime patrol assets can present a significant challenge for small coastal or island states. Some such countries find it difficult to carry out effective maritime patrols in what may be a vast search and rescue area. In some regions, this burden has been eased through increased cooperation from other countries in the region. Such cooperation can manifest in the provision of both human and material resources, such as patrol vessels and helicopters and even personnel for the purposes of carrying out joint patrols. A Europe-based example is the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX), which was established in 2004 to enhance border security through strengthened coordination of EU Member States' activities and pooling of their resources. FRONTEX has independent legal personality and operational and financial autonomy.<sup>115</sup> A key part of the operational goals of FRONTEX is the detection (and interception) of migrants attempting to cross sea borders irregularly, but it also targets the criminal organizations that facilitate their irregular movement.<sup>116</sup>

A particular challenge in addressing smuggling at sea is linking a vessel detected at sea with smuggling-related crimes. Instances of migrant smuggling at sea are frequently treated simply as instances of irregular migration, with little or no consideration for the criminal facilitators involved. The result is that the *modus operandi* of smugglers is supported rather than curtailed as investigative opportunities are lost. When responses to smuggling at sea are merely reactive rather than proactive, smugglers are able to continue their crimes with impunity.

Another result of disregarding the involvement of criminal smugglers in facilitating irregular migration at sea is that prevention opportunities are missed. At the point where migrants embark on sea journeys, several smuggling crimes may already have been committed. The role played by coastal states from where smuggling vessels depart must be stressed and supported. Criminal justice actors in those countries have an invaluable preventative role to play; detection of smuggling of migrants at sea ideally takes place at coasts of departure before journeys by sea are embarked upon and before lives are put at risk at sea.<sup>117</sup>

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<sup>115</sup> Article 15, paragraph 1 of the FRONTEX Regulation.

<sup>116</sup> FRONTEX, [http://www.frontex.europa.eu/origin\\_and\\_tasks/tasks/](http://www.frontex.europa.eu/origin_and_tasks/tasks/)

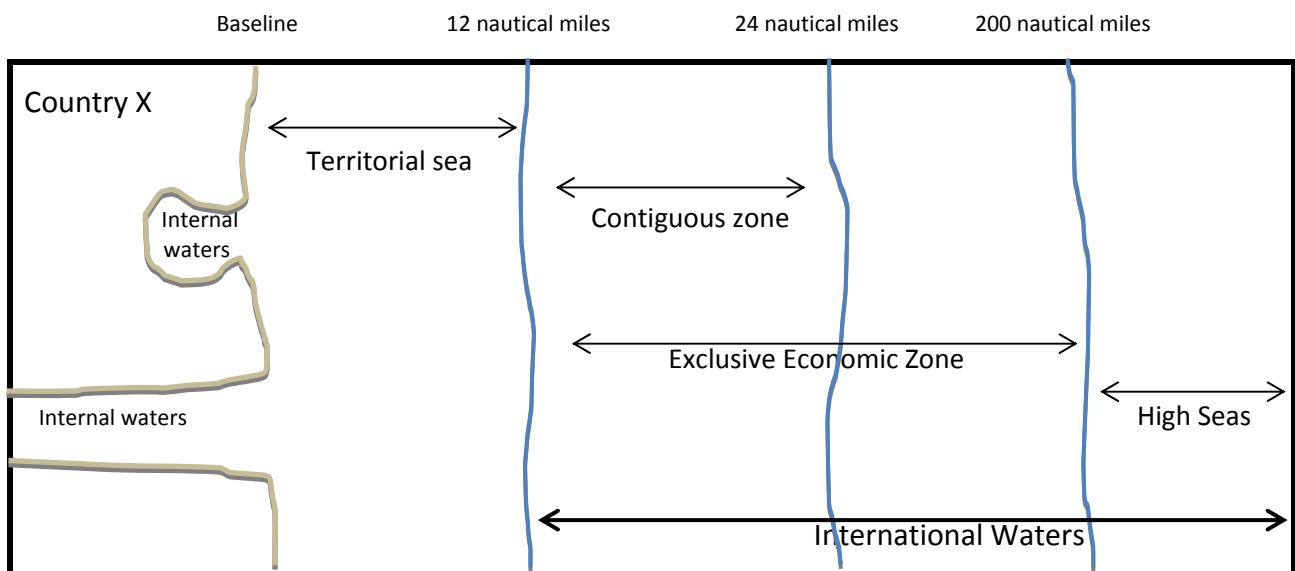
<sup>117</sup> The role of coastal states in preventing departure of boats is discussed below in 3.4.3.

UNHCR thanks Italian navy for rescuing boat in distress packed with refugees from Libya  
 11 November 2011  
 After two days of sending out distress calls from a satellite phone in the Mediterranean Sea, 44 people, mostly sub-Saharan, were rescued by an Italian military vessel last night. UNHCR is grateful that the Italian navy took this initiative despite the fact that the boat was in Maltese search and rescue waters.  
 UNHCR was alerted that relatives of some of the passengers onboard the boat called from a satellite phone on Tuesday evening. A full 48 hours later, the boat was rescued in the middle of the night. The delay in rescuing the boat led to huge risks to the lives of the people on board the boat in distress. Risks included drowning, dehydration and exposure. A woman with a small baby was evacuated by helicopter to Sicily from Lampedusa.  
 This is the first boat originating from Libya that has arrived in Europe since August 17th.  
 Source: UNHCR <http://www.unhcr.org/4ebd29809.html>

### 3.1.2. Interception

Under the international law of the sea, a coastal State can take action against a foreign vessel engaged in smuggling of migrants within its territorial sea. Action may also be taken against a foreign vessel by a coastal State in its contiguous zone, or through the exercise of the right of hot pursuit (UNCLOS Convention, Articles 33 and 111). The consent of the flag State to such actions is not required under the applicable provisions of the UNCLOS Convention. In its contiguous zone, the coastal state can proportionately enforce interception to prevent breaches of its immigration laws and regulations within its territory or territorial sea (UNCLOS Convention Article 33). The right of hot pursuit arises where a coastal State has good reason to believe that a foreign ship has violated the laws and regulations of that State. Article 111 of the UNCLOS Convention sets out the scope of the right of hot pursuit and the process of exercising the right.

**Figure 1: Sea areas in international law**



Additionally, all States have the right of visit under Article 110 of UNCLOS. The right of visit is an exception to the general principle of exclusive jurisdiction of a flag State over its ships on the high seas (UNCLOS Convention Article 92). Pursuant to Article 110, a warship that encounters a foreign ship (other than a ship entitled to immunity) on the high seas may visit and board the

ship if there are reasonable grounds for suspecting that the ship is engaged in certain activities, including cases where the ship is without nationality, or although flying a foreign flag or refusing to show its flag, the ship is, in reality, the same nationality as the warship. It must be noted here that smuggling of migrants per se is not listed by UNCLOS as an instance in which the right of visit can be exercised. However, the right of visit is sometimes exercised in respect of ships engaged in smuggling of migrants, on the basis that such ships lack nationality. Article 110 also applies to the exclusive economic zone.

Article 8 of the Migrant Smuggling Protocol allow States parties that encounter vessels suspected of involvement in smuggling migrants, to board and search such vessels under certain circumstances. The Migrant Smuggling Protocol sets out the right of States parties to request authorisation from the flag State to board the vessel, search it, and/or take appropriate measures where there are reasonable grounds to suspect that the vessel is involved in migrant smuggling.<sup>118</sup> The main focus of Article 8 of the Migrant Smuggling Protocol is to facilitate law enforcement action in relation to vessels engaged in the smuggling of migrants by sea. The meaning of 'engaged in the smuggling of migrants by sea' includes both direct and indirect engagement, including cases where a mother ship has already transferred migrants to smaller vessels for landing and no longer has any on board or has picked up migrants while at sea for the purposes of smuggling them. This would not include a vessel that has simply rescued migrants who were being smuggled by another vessel.

Article 8(2) provides a mechanism for a State party to authorize another State party to take measures. A State Party, in respect of a vessel that is flying its flag or claiming its registry, or a vessel without nationality or assimilated to a vessel without nationality, is to request assistance of another State party in suppressing the use of the vessel for the purpose of smuggling of migrants (Article 8(1)). In addition, the framework includes a mechanism for a State party, in respect of a vessel flying its flag, to authorize another State party to board, search and take other appropriate measures in respect of the vessel to suppress the use of the vessel for the purpose of smuggling of migrants by sea (Article 8(2)).

The dilapidated condition of vessels used by many smugglers and the fact that boarding may take place at sea, far from safe harbour conditions raises concerns about the basic safety and security of migrants and others on board such vessels. Stopping and boarding vessels also raises concerns about the sovereignty of States to which such vessels are flagged or registered and about the commercial losses of ship owners that might result. For these reasons, Article 9 of the Migrant Smuggling Protocol incorporates basic safeguard requirements to protect such interests before and during boarding and to make some provision for access to remedies later, in cases where the search proves to be unfounded.

The Protocol does not limit the class or status of officials who can exercise maritime search powers to warships and military aircraft; such powers may be extended to any official or agency with appropriate law enforcement authorities. However, any boats, ships or aircraft used must be clearly marked and identifiable as being on government service and authorized to that effect (Migrant Smuggling Protocol, Article 9(4)). Given the risks and difficulty associated with boarding and searching vessels at sea, authority to exercise powers created pursuant to the

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<sup>118</sup> Migrant Smuggling Protocol, Article 8(7).

Protocol is ideally limited to officials or officers who have the necessary training, competence and equipment.

### 3.1.3. Rescue

Vessels used for smuggling may be confiscated if apprehended and for that reason, smugglers often use dilapidated vessels. In some cases, when such vessels are encountered at sea, they are overloaded with migrants and in imminent danger of sinking. Rescue of persons in distress at sea is an international obligation under the international law of the sea, and a humanitarian necessity, regardless of who the people are and their reasons for moving.<sup>119</sup>

As has been discussed, it is also part of the *modus operandi* of many smugglers to take advantage of States' rescue obligations by sabotaging vessels or instructing migrants on board to do so. The duty to rescue is paramount, taking priority over other concerns including law enforcement objectives, regardless of the fact that smugglers' objectives may be advanced when rescuing authorities assume responsibility for migrants at sea. The focus of Article 8 on suppression of a criminal activity does not undermine this duty under maritime law and custom to rescue those in peril at sea. Rather, the obligation to preserve life at sea is reflected in the language used in Article 8(5) of the Migrant Smuggling Protocol, which provides that State parties shall take no additional measures without the express authorisation of the flag State, "except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements." Safeguards are further set out in Article 9 and the Article 19 savings clause. Authorities in whose search and rescue area the vessel in distress is found are responsible for coordinating rescue operations.

Article 98 of UNCLOS, and Chapter V, Regulation 33 of the International Convention for the Safety of Life at Sea (SOLAS Convention) make clear that there is an obligation on ship's masters to render assistance to those in distress at sea. States have a corresponding obligation to cooperate in rescue situations to relieve the master of responsibility to care for survivors and allow those rescued to be delivered to a place of safety. The government responsible for the search and rescue operation in which survivors are picked up is responsible for providing a place of safety or for ensuring that such a place of safety is provided.<sup>120</sup> Amendments to the SOLAS Convention and the Search and Rescue Convention (SAR Convention) aim to ensure that people in distress at sea are assisted, with minimal inconvenience to the assisting ship. States Parties are required to assist ships by embarking persons in distress so as to release the rescuing ship from its obligations with minimum deviation from its intended voyage, and to arrange disembarkation of rescued persons as soon as possible.<sup>121</sup>

Despite these clear principles of international law, ship's masters may be hesitant to fulfil their obligations to render assistance to migrants at sea. There are several reasons for this reluctance.

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<sup>119</sup> UN High Commissioner for Refugees, *The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees: Report of the Office of the United Nations High Commissioner for Refugees*, 11 April 2008, A/AC.259/17, available at: <http://www.unhcr.org/refworld/docid/49997aeb27.html>, p.2.

<sup>120</sup> See for instance, Council of Europe, Parliamentary Assembly, *Europe's 'Boat-people' mixed migration flows by sea into Southern Europe*, 11 July 2008, Doc. 11688, p.11, available at <http://www.unhcr.org/refworld/docid/487c61f616.html>.

<sup>121</sup> Amending SOLAS Regulation 33 and Amending SAR Chapter 3.1.9.



The rescue of persons at sea will likely require a diversion from the intended route, which may have significant cost implications for the ship concerned. Beyond the inconvenience and financial consequences of picking up persons in distress and detouring to disembark them on land, there may also be concern that authorities may not accept persons for disembarkation and ship's captains may be caught in the middle of state's arguments as to whose responsibility rescued persons are.<sup>122</sup> Depending on where the rescue is carried out, issues can arise such as which country rescued persons should be disembarked in, how long they will stay on board the ship that rescued them, how to ensure that they are provided with food, water and necessary medical attention, who bears the cost for the rescue at sea and how to ensure that the principle of non-refoulement is upheld.<sup>123</sup>

Added to these challenges, considerations specific to migrant smuggling at sea also may deter ship's masters from carrying out rescue. On one hand, ship's masters may be concerned that prolonged searches will be carried out on their vessels, or that their vessel will be detained for investigative purposes.<sup>124</sup> Another key concern is that ship's masters may be hesitant to rescue migrants in distress at sea for fear of being prosecuted for migrant smuggling.<sup>125</sup> Unfortunately in some jurisdictions, this fear is not a baseless one. There have been situations where ship's masters who have rescued persons at sea, have been prosecuted for migrant smuggling crimes as a result.<sup>126</sup> Flowing on from this, there have been tragic incidents of deaths at sea, where ship's masters have failed to fulfil their obligations to render assistance in fear of being prosecuted. The United Nations High Commissioner for Human Rights cautions that governments' failure to support shipmasters and fishermen who rescue persons at sea, acts as a disincentive for further such rescues to be carried out.

“A failure to protect migrants' human rights encourages boat captains and shipping companies to put calculations of the financial cost of salvaging poor and unwanted seafarers in distress above both their duty to rescue and human compassion. Every time a government refuses to allow those who have been rescued to disembark at the nearest port or the final port of destination, they increase the pressure on captains and shipping companies to avert their gaze when they see a migrant boat in trouble. It can cost companies millions of dollars if states refuse to let their vessels enter ports or off-load cargoes because there are migrants on board. The disincentives for responsible behaviour became paradoxically clear when fishermen who helped seafarers in distress

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<sup>122</sup> See for instance, Council of Europe, Parliamentary Assembly, Europe's 'Boat-people' mixed migration flows by sea into Southern Europe, 11 July 2008, Doc. 11688, p.11, available at <http://www.unhcr.org/refworld/docid/487c61f616.html>.

<sup>123</sup> Christine Adam, *Migration at Sea, Rescue at Sea*, in IOM 'International Migration Law and Policies: Responding to Migration Challenges in West and North Africa', Round Table 8-9 December 2009, Dakar, Senegal, p.73.

<sup>124</sup> See UNODC *Toolkit to Combat Smuggling of Migrants*, Tool 8.4, Rescue at Sea.

<sup>125</sup> UNODC, Issue Paper: Transnational Organized Crime in the Fishing Industry, 2011, p.64.

<sup>126</sup> See for instance, Council of Europe, Parliamentary Assembly, Europe's 'Boat-people' mixed migration flows by sea into Southern Europe, 11 July 2008, Doc. 11688, p.11, available at <http://www.unhcr.org/refworld/docid/487c61f616.html>. Also see <http://www.migreurop.org/article1496.html?lang=fr>.

were made to face criminal charges, rather than praise for saving lives and fulfilling a duty clearly spelled out in international law and common humanity.”<sup>127</sup>

It is clear that the Migrant Smuggling Protocol does not target persons who carry out rescues of migrants in distress. The Migrant Smuggling Protocol emphasises the need to carry out rescues in accordance with international obligations to do so. In this context, both States and ship’s masters should be made aware of their rescue obligations. The key challenge for the international community is how to support them to fulfil those obligations, while at the same time combating the smuggling which lead to the need for rescue in the first place.

### 3.1.4. Assistance and protection

There are several protection and assistance measures to take with respect to migrants who are smuggled at sea; indeed Article 2 of the Migrant Smuggling Protocol clarifies that protection is one of the key purposes of the Protocol. Article 16 of the Migrant Smuggling Protocol sets out mandatory protection and assistance provisions.

#### **Migrant Smuggling Protocol, Article 16, Protection and Assistance**

1. ...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 smuggled] 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 [smuggled].
3. Each State Party shall afford appropriate assistance to migrants whose lives or safety are endangered by reason of being [smuggled].
4. In applying the provisions of this article, States Parties shall take into account the special needs of women and children.

Article 16 clarifies that all persons intercepted or rescued at sea should receive assistance in accordance with their needs. Article 16(3) requires that basic assistance be provided to smuggled migrants whose lives or safety are endangered by virtue of having been the object of smuggling. The nature of assistance required by a migrant smuggled by sea will depend on the nature of their smuggling experience. Migrants intercepted at sea may require first aid, if for instance they are suffering from hypothermia, dehydration and/or are in a state of shock as a result of their journey at sea. Article 16(4) of the Protocol clarifies that special needs of vulnerable groups including women and children must be taken into consideration in rescue operations and thereafter.

<sup>127</sup>Navi Pillay, United Nations High Commissioner for Human Rights, *Migrants at sea are not toxic cargo*, 9/5/2009, <http://www.abs-cbsnews.com/views-and-analysis/09/04/09/migrants-sea-are-not-toxic-cargo-navi-pillay>.

Expert practitioners have stressed that active cooperation with international organisations, non-governmental organisations and/or other service providers can be useful to ensure that assistance obligations are appropriately understood and adequate resources are acquired to meet them. Beyond the humanitarian impetus, experts also stress that long-term law enforcement objectives of combating smuggling are served by providing adequate assistance to migrants. Migrants whose basic needs are met are more likely to cooperate with the criminal justice system and potentially provide valuable information to investigators about the criminal actors and methods behind their journey.

In respect of protection there are two key considerations; protection from organized crime groups and humanitarian protection. Under Article 16(2) of the Migrant Smuggling Protocol, States parties have agreed to take ‘appropriate measures’ to protect migrants from violence inflicted on them for reason of being smuggled. In the context of smuggling by sea, there may be particular implications of this obligation. For instance, simply repelling a smuggling vessel or leaving smuggled migrants on it may effectively leave migrants in the hands of organised criminals and undermine law enforcement efforts against them, and therefore be in contravention of the Migrant Smuggling Protocol. Such a response may also simply result in reattempts. In this situation, investigative goals would be better served by taking smuggled migrants to places of safety to provide necessary facilities for debriefing and interviews by expert investigators.

As discussed above, the extent to which violence is used by smugglers in smuggling by sea situations varies in different regions of the world. While violence is sometimes used to control passengers on board vessels, other times smugglers see no such need or are not on board. In more complex smuggling processes, threats of violence may be directed at third persons based on land. Migrants may for instance be told that their family members in countries of origin or destination will be harmed in the event that the migrant cooperates with law enforcement authorities upon interception. Contrasted to this, in many cases at the point where the sea journey takes place, migrants do not need protection from smugglers. Rather, they may consider smugglers to be their protectors and allies for supporting them to achieve their migration goals and those of their family. This being the case, the challenge for law enforcers is to find incentive for migrants to assist criminal justice practitioners to investigate the people whom migrants are paying to assist them.

The second key protection priority arises by virtue of Article 19 of the Migrant Smuggling Protocol, highlighting the fact that any responses to migrant smuggling situations should be in accordance with protection obligations set out in the 1951 Refugees Convention and international human rights law. Such obligations have specific implications for operations against migrant smuggling at sea.

**Article 33, Convention Relating to the Status of Refugees (1951)**

1. 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.
2. The benefit of the present provision may not, however, 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 judgement of a particularly serious crime, constitutes a danger to the community of that country.

The Office of the United Nations High Commissioner for Refugees (UNHCR) has noted that the term 'entry systems' includes both border systems and also interception operations intending to prevent, interrupt or stop individuals from reaching or entering territory. Entry officials who work in such systems include law enforcers authorised to take action against migrant smuggling at sea. Accordingly, their actions need to take account of human rights obligations (including the right of all persons to leave any country, including their own), and the right of all persons to seek asylum and other measures of international protection.<sup>128</sup>

Persons found not to be in need of international protection should be promptly returned to their countries of origin or residence. Where interception occurs in the territorial waters of a third country in which jurisdiction is not exercised, the intercepting country and the third country may be jointly responsible for the rights of intercepted persons. International human rights law and the 1951 Refugees Convention should be fully complied with in such situations.<sup>129</sup> States are not exempt from obligations in international refugee and human rights law on the high seas.<sup>130</sup> It is clear that interception measures should therefore not result in persons in need of protection being directly or indirectly refouled, and those in need of international protection should have access to solutions.

If persons rescued at sea claim asylum, the closest rescue and coordination centre should be alerted, UNHCR should be alerted and shipmasters should not request disembarkation in the country of origin from which the individual has fled. Further, personal information regarding asylum-seekers should not be shared with authorities of that country or others who may convey such information to authorities.<sup>131</sup> Identification of persons in need of protection should not be done on an ad hoc basis with expeditious mechanisms in the course of interception operations at sea.<sup>132</sup> Processing of asylum seekers should take place on dry land to minimise traumatisation, to prevent possible procedural injustices. Additionally, law enforcement officials at sea are not required to make decisions outside the scope of their role and training; those who are trained to patrol sea borders on vessels cannot be expected to have in-depth understanding of the Refugees Convention but rather require appropriate training and guidelines to direct intercepted persons expressing protection needs to appropriate authorities.<sup>133</sup> As an example, where a vessel containing hundreds of smuggled migrants is intercepted, and smugglers have instructed all of those migrants to claim asylum, realistic expectations should be placed on the role of the five or so intercepting officers who may have a naval rather than an investigative background.

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<sup>128</sup> UNODC, Model Law against the Smuggling of Migrants, pp.93 – 94.

<sup>129</sup> European Council on Refugees and Exiles, Defending Refugees' Access to Protection in Europe, December 2007, available at: <http://www.unhcr.org/refworld/docid/4766464e2.html>, p.40.

<sup>130</sup> See the interception and rescue at sea of asylum seekers, refugees and irregular migrants, Resolution 1821 (2011), Parliamentary Assembly, Council of Europe, paragraph 8.

<sup>131</sup> See UNHCR 'Rescue at Sea – A guide to principles and practice as applied to migrants and refugees'.

<sup>132</sup> European Council on Refugees and Exiles, Defending Refugees' Access to Protection in Europe, December 2007, available at: <http://www.unhcr.org/refworld/docid/4766464e2.html>, p.42.

<sup>133</sup> UNHCR, Conclusion on Protection Safeguards in Interception Measures, 10 October 2003, No. 97 (LIV) – 2003, available at: <http://www.unhcr.org/refworld/docid/3f93b2894.html>.

While the obligations to protect and assist persons rescued at sea are clear, how to uphold them in practice while also addressing migrant smuggling at sea is not. The challenge is to meet these obligations, without at the same time serving the objectives of migrant smugglers. Individuals who protect borders are placed in the difficult position of defending the values and integrity of that state from smugglers who deliberately set out to exploit those qualities for their own criminal ends.

## **3.2. Investigation and prosecution**

### **3.2.1. Legislative Framework**

One of the key challenges in fighting migrant smuggling by sea is the lack of harmonised understanding of the phenomenon and legal definitions among the countries involved. Not all States are parties to the Migrant Smuggling Protocol. Some countries are yet to incorporate specific anti-migrant smuggling legislation into their domestic legal frameworks. In such cases, smugglers may simply be charged under immigration or sea-related crimes rather than with serious transnational offences set out in the Migrant Smuggling Protocol. Alternatively, particular acts that they have committed may provide the basis for investigation and prosecution, for instance where violence or endangerment of life at sea is involved.

Where the crime of migrant smuggling exists in domestic legislation, the elements that it entails may differ from one country to another, meaning that some smugglers may be able to evade severe penalties. Different definitions of migrant smuggling across jurisdictions can have a profound effect on the ability of states to bring smugglers to justice. Irregular migrants may arrive by sea in one country with the intention of then travelling on by land or air to other countries in the same region. Where definitions are not harmonised across those countries, different approaches may be taken in response. Similarly, where smugglers transport migrants across several countries to their destination, lack of harmonisation between countries of origin, transit and destination may mean that the response cannot be easily coordinated.

Where smugglers do not receive sentences in proportion to the severity of their smuggling crimes, they may soon be released back into the community and continue their criminal activities. Conversely, where sentences are severe and take into account aggravating circumstances such as endangering lives at sea, key smugglers may be removed from the network sending a strong message to others that may have a deterrent effect. Indeed, some states have noticed a reduction in use of particular sea routes or increased safety of migrants smuggled at sea, directly owing to changes in law or prosecutions which penalise acts such as sabotage of vessels to induce rescues and failure to provide life jackets to passengers.

Another challenge particular to situations of migrant smuggling by sea concerns the nature of territorial jurisdiction. It is not always easy to determine where a sea border has been crossed and therefore where a crime has been committed. Different laws are applicable in different seas; some allow travel on internal waters without specific authorizations, in others, irregular migration can not have occurred at law until irregular migrants set foot on land. These challenges stress the need for universal harmonization of understanding in accordance with the Migrant Smuggling Protocol so as to address lacuna in current legal frameworks.

### **3.2.2. Identification of smugglers on board boats**

As discussed above, depending on the region and the modus operandi used by smuggling networks, the smuggler or smugglers may or may not be on board the vessel. Where first contact is made with a boat piloted by the smuggler, authorities will need to be astute in identifying the smuggler as soon as interception is made. The gathering of evidence in relation to the smuggler at this point is vital to separate him from migrants and to investigate him and the network behind him accordingly. Where there is no smuggler on board, authorities are required to launch an investigation into the smugglers behind the particular vessel based on the evidence before them. In both situations, the process of investigating a smuggling network may operate over several countries and continents is extremely complex, and requires that strong evidence be collected immediately at the point of first detection.

In some cases, the smuggler on board a boat may be easy to identify. For instance, he may have a different nationality to all other persons on board, be clearly at the helm and equipped with the only phone and life jacket on board. In other situations, the pilot of the boat may disguise himself among the other passengers upon interception. Passengers may all claim to have piloted the boat so as to protect the identity of the true captain or tell intercepting authorities that the pilot died en route. The situation on a vessel may be chaotic at the point of interception, making it difficult for authorities to identify the captain and/or crew on board. In this context, experts underline the importance of tasking officials to gather as much intelligence as possible at the point of first contact.

This stage of investigation is also crucial for collecting evidence necessary to establish aggravating circumstances. For instance, investigations of deaths that occur at sea as a result of migrant smuggling crimes must be prioritized, as must identification of migrants who have died as a result of being smuggled or who are missing. Information about dead and missing people is not only essential for establishing aggravating circumstances that can strengthen the sentence bestowed on convicted smugglers, but also may prove to be essential evidence for authorities in countries of origin who are investigating the whereabouts of missing nationals, or who would be responsible to instigate an investigation into organised crime groups who are culpable for deaths of their nationals.

### **3.2.3. Investigating land-based organisers**

The key challenge in combating migrant smuggling whether it occurs by land, air or sea, is capturing high-level smugglers. Small actors who are prosecuted can be quickly replaced. Sustainable and effective response requires that high-level smugglers be targeted, and in the context of smuggling by sea, underlines the essentiality of linking investigations which address movements at sea with those movements that take place on land and in air. The nature of organised crime is that those at the top of the criminal hierarchy are often extremely wealthy and well-connected, and may even play valued and legitimate roles in their communities. These facts can make them extremely difficult to access and target in criminal investigations. Nevertheless, it is such persons whose actions undermine state sovereignty and lead to their 'customers' dying at sea, who need to be disrupted in their activities.

There is a level of organisation required to arrange smuggling by sea, which offers investigators several avenues for investigation. In coastal countries of departure, the means of recruiting and gathering migrants in sea hubs before departure can present opportunities for intervention and

prevention of sea smuggling. The means by which smugglers steal, buy or otherwise procure vessels to be used in smuggling ventures should also be investigated. On the other side of the sea journey, the systems in place to facilitate migrants' onward journey from the coastal country of arrival to the final country of destination should also be investigated. Also key to understanding migrant smuggling, are the financial systems in which they use to commit their crimes and launder their profits. In other words, several elements of the crime of smuggling at sea are perpetrated on land.

For authorities who encounter smuggling at sea, the boat and its occupants should be considered as the starting point in an investigation that uncovers the smuggling network behind it, back to the coast of origin as well as the countries of transit and origin. In some regions, there is a high level of understanding about the number of boats that leave a coastal country of origin and embark on sea journeys, but little understanding of the routes and methods that culminate in those departures. Mounting an evidence-based response to smuggling by sea requires that the phenomena be addressed upstream, where land and air movements occur in countries of origin and transit, and where smugglers organise sea smuggling. In practical terms, this means that information gathered upon interception or via debriefing of a migrant smuggled at sea, may lead to a middleman in the coastal country of departure. The middleman in turn may lead to a mid-level organiser in a country of air transit, who may ultimately lead to a high-level smuggler living in the country of origin with associates in the country of final destination. Land-based investigation of migrant smugglers is beyond the scope of this Issue Paper, yet its inextricable connection to smuggling ventures at sea must be stressed.

### 3.3. Prevention

Preventing migrant smuggling by sea requires States to balance their obligations at international law with their legitimate interests in protecting state sovereignty from violations by organised crime groups. Increased border controls can rapidly and significantly impact irregular migration flows and smuggling routes. On the other hand, strong legislation and international cooperation tend to have more progressive and more efficient impact, albeit in the longer rather than shorter term.<sup>134</sup> Indeed, as has been stressed throughout this Issue Paper, if smuggling networks are aware of effective legislation and cooperative agreements in place, they will often redirect their routes elsewhere. However, law enforcement alone is inadequate to address migrant smuggling. Sustainable development, conflict prevention, protection-sensitive entry procedures for asylum seekers and refugees, and opportunities for regular migration are all necessary to meaningfully and sustainably reduce the demand for smuggling services.

#### 3.3.1. Addressing Root Causes

##### **Migrants Smuggling Protocol, Article 15, Prevention**

3. Each State Party shall promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socio-economic realities of migration and paying special attention to

<sup>134</sup> ICMPD I-map, <https://www.imap-migration.org/index2.html> and <https://www.imap-migration.org/pages/en/migrationroutes.html> accessed on 19 July 2011.

economically and socially depressed areas, in order to combat the root socio-economic causes of the smuggling of migrants, such as poverty and underdevelopment.

It is clear that until the push factors that give people reason to leave their country are addressed, there will always be a market for opportunistic smugglers. A key long-term solution to migrant smuggling is therefore the improvement in living standards around the world, so people are not forced to flee their homes in search of protection or simply in search of a better life. In the meantime it is essential that cooperative efforts be made by countries to address the crime of migrant smuggling in a coordinated and sustainable fashion across the globe so as to remove opportunities for illegal activities that take advantage of peoples' mobility.

A key challenge with respect to preventing migrant smuggling is ensuring that policies in place do not result in pull factors towards particular destination countries. The modus operandi of migrant smugglers often involves abusing the international obligations of States. Smugglers are aware of policies, their weaknesses and their loopholes to enable the stay of smuggled migrants. The result of such long-term strategizing on behalf of smugglers is that one boat load of arrivals by sea could result in a significant number of secondary claims being made, which can flood immigration processing systems. These considerations underscore the fact that a government's particular policies – and perceptions of those policies – can have a significant impact on the modus operandi used by smugglers. From the perspective of combating the crime of smuggling of migrants by sea the key challenge is ensuring that protection obligations are upheld, without creating avenues that smugglers can exploit in targeting a given destination.

As increased measures are taken by countries of origin, transit and destination to intercept migrant smuggling by sea, several sea routes have shown a noticeable reduction. Increased controls of sea borders, more restrictive immigration laws and cooperation agreements between countries of origin and destination may simply relocate the sea smuggling routes elsewhere. Indeed, smugglers are adept at modifying their routes, sometimes resulting in journeys over longer distances and under more dangerous conditions for migrants concerned.

### 3.3.2. Awareness Raising

#### **Migrant Smuggling Protocol, Article 15, Prevention**

1. Each State Party shall take measures to ensure that it provides or strengthens information programmes to increase public awareness of the fact that [smuggling of migrants] is a criminal activity frequently perpetrated by organized criminal groups for profit and that it poses serious risks to migrants concerned.
2. ...States parties shall cooperate in the field of public information for the purpose of preventing potential migrants from falling [into the hands of] organized criminal groups.

Article 15 of the Migrant Smuggling Protocol sets out mandatory awareness raising obligations of States Parties. *Prima facie*, those who would put their lives into the hands of smugglers should be made aware of the fact that smugglers are criminals who may endanger lives and safety.

Smugglers or those who are vulnerable to committing smuggling-related crimes should also be



made aware of the fact that migrant smuggling is illegal and has criminal justice consequences. A key consideration in this respect is that smugglers adjust their routes and methods according to changes in policies and law enforcement response, meaning that smugglers' perceptions of those policies and responses are paramount. Policies and responses and awareness of them should act as a deterrent to smugglers. An analogy can perhaps be made here to 'no cash kept on premises' signs placed on shop fronts to deter would-be thieves; policies and responses and awareness of them should act to deter smugglers from putting peoples' lives at risk at sea.

Public perceptions of migrant smuggling by sea issues also have impact on the phenomenon. Migrant smuggling overlaps with other areas of public interest, including state sovereignty and immigration issues. The result of this is that efforts to address the crime can become heavily politicised. Though more migrant smuggling occurs by land and air, sea smuggling makes for captivating headlines and sensational stories. The picture that is conveyed to the public is therefore often skewed and incomplete. The result can be that the actions of law enforcement authorities are heavily scrutinized while the crimes of smugglers are overlooked. Similarly, migrants themselves may be inaccurately implicated in crimes where their situations are not properly understood. Inaccurate reporting of policies and responses can also have negative results; including incidents of private vessels refusing to rescue migrants at sea due to inaccurate perceptions that they would be prosecuted for smuggling offences for doing so. Where the public is not given accurate information about migrant smuggling and related issues, the result can be public pressure on governments to change policies in ways that may facilitate crime and endanger migrants, or lack of public support for approaches that would act to curtail it and protect people from harm at the hands of smugglers.

The above considerations highlight the need for increased efforts to raise awareness of the people most directly involved and in so doing, to underline the important responsibility of the media to ensure that its reporting on smuggling by sea issues is well-informed, accurate and balanced in the context of wider issues at play.

### **3.3.3. Intercept smuggling vessels before departure**

In support of preventing sea smuggling voyages from taking place, Navi Pillay, the United Nations High Commissioner for Human Rights, stated that "[i]t is literally vital that flag States exercise effective jurisdiction and control over their vessels by ensuring strict compliance with safety standards set out in relevant international instruments so that unseaworthy ships and boats remain ashore. They must also prevent and prohibit smuggling and trafficking of migrants."<sup>135</sup> A report of informal consultations by the Office of the United Nations High Commissioner for Refugees also notes that "[e]ffective measures are required to prevent small ships and other ships that are not subject to international regulation from being used for smuggling or trafficking purposes. Some States may require assistance and support in that regard."<sup>136</sup> Such recommendations underscore the importance not only of intercepting migrant smuggling at sea,

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<sup>135</sup> Navi Pillay, United Nations High Commissioner for Human Rights, *Migrants at sea are not toxic cargo*, 9/5/2009, <http://www.abs-cbsnews.com/views-and-analysis/09/04/09/migrants-sea-are-not-toxic-cargo-navi-pillay>.

<sup>136</sup> United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea, Ninth meeting, 23-27 June 2008, The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees, Report of the Office of the High Commissioner for Refugees, A/AC.259/17, paragraph 11 and 12.

but also of acting to prevent migrant smuggling by sea from occurring in the first place.

As mentioned above, the elements of the crime that are perpetrated on land offer avenues for criminal justice intervention. Particular responsibility in this respect lies with coastal countries of departure where smugglers procure boats and gather migrants at safe houses. Proactive law enforcement actions prior to a boat's departure can avoid the need for reactive responses later in the process and can save lives. Strong intelligence collection and investigations of smuggling ventures from the point of origin through to destinations across seas can result in vessels being confiscated before smugglers are able to use them for smuggling purposes. In short, flag States must exercise effective control over their vessels, particularly by prohibiting them from being used for smuggling of migrants and unseaworthy vessels should not be permitted to sail.<sup>137</sup>

### 3.3.4. Increased research, data collection and information sharing

Increased and improved data collection and analysis are necessary to ensure evidence-based response to the issue of migrant smuggling at sea. To facilitate a more accurate regional and global picture, countries' understanding of migrant smuggling should be more closely aligned so that emerging criminal trends can be more fully understood and information exchanged to facilitate improved response.<sup>138</sup> The lack of harmonization of research methodologies means that statistical data cannot be accurately assessed or effectively compared. This failure to accurately understand phenomena not only means that effective response is hampered but also that statistics are susceptible to exaggeration or misinterpretation. Furthermore, most research on migrant smuggling has focused on that towards Western Europe and North America, with little known of the phenomenon elsewhere, resulting in a reactive Western-centric view of the phenomenon with a critical lack of information available about other regions.<sup>139</sup>

There is also a lack of research available on the characteristics of migrants and their reasons for turning to smugglers, profiles of smugglers, their relationships to migrants and the organisation of smuggling networks.<sup>140</sup> More needs to be known particularly about the social profiles of high-level smugglers of migrants by sea, and about financial transactions involved in committing their crimes. International, regional and/or bilateral cooperation is essential to strengthen intelligence in this respect given that acquiring and analysing information about transnational smuggling networks requires transnational expertise from those persons most equipped to understand the specificities of the persons and processes involved.

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<sup>137</sup> UN High Commissioner for Refugees, *The treatment of persons rescued at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees: Report of the Office of the United Nations High Commissioner for Refugees*, 11 April 2008, A/AC.259/17, available at: <http://www.unhcr.org/refworld/docid/49997aeb27.html>, pp.2-3.

<sup>138</sup> See for instance, UN High Commissioner for Refugees, *The treatment of persons rescue at sea: conclusions and recommendations from recent meetings and expert round tables convened by the Office of the United Nations High Commissioner for Refugees: Report of the Office of the High Commissioner for Refugees*, 11 April 2008, A/AC.259/17, available at: <http://www.unhcr.org/refworld/docid/49997aeb27.html>, p.6 paragraphs 51- 52.

<sup>139</sup> UNODC *A Global Review and Annotated Bibliography of Recent Publications*, January 2011, p.22.

<sup>140</sup> UNODC *A Global Review and Annotated Bibliography of Recent Publications*, January 2011, p.64, p.73, p.77, p.94.

### 3.4. Cooperation

The key point to emerge in considering the issue of migrant smuggling by sea, is that international cooperation does not merely strengthen response, but is absolutely essential to it. An ideally pitched criminal justice response to migrant smuggling in one State will fail without the cooperation of other States. Without strengthened cooperation, criminal smugglers will continue to commit their crimes with impunity, evading justice, undermining state sovereignty and security, and compromising lives and safety at sea. In short, smuggling of migrants is a transnational crime requiring a transnational response. Smugglers have successfully managed to transcend borders as well as language and cultural differences in the commission of their crime; those who would stop them must do likewise.

#### 3.4.1. International cooperation

##### Summary of international cooperation requirements in Migrant Smuggling Protocol

Each State party is required:

- To cooperate to the fullest extent possible to prevent smuggling of migrants by sea (Article 7)
- To render assistance to a State party that has the right to board a vessel flying its state flag (Article 8(1))
- To inform the flag State if it has boarded its vessel (Article 8(3))
- To respond expeditiously to a request for determination if a vessel is entitled to claim that State as the State of its registry (Article 8(4))
- To respond expeditiously to a request for authorization to board, secure and take other measures with respect to a vessel flying its flag (Article 8(4))
- To designate an authority to assist or respond to requests for assistance concerning such vessels (Article 8(6))
- To exchange information with other relevant States regarding the smuggling of migrants, consistent with domestic legal systems (Article 10(1))
- To comply with conditions imposed upon it by States sending such information (Article 10(2))
- To provide or strengthen specialized training to combat smuggling of migrants (Article 14(1))
- To cooperate with each other and competent international organizations and non-governmental organizations to ensure adequate training to prevent smuggling of migrants (Article 14(2)).

By ratifying the Migrant Smuggling Protocol, States Parties have agreed to cooperate to the fullest extent possible to prevent and suppress smuggling of migrants by sea. Articles 7 to 9 of

the Migrant Smuggling Protocol establish a framework for cooperation between States Parties to act in relation to smuggling of migrants by sea specifically. According to Article 8 of the Migrant Smuggling Protocol, a State Party may seek cooperation with other States parties with respect to its own flagged vessels; vessels flying the flag of other States Parties; vessels without nationality or a vessel assimilated to a vessel without nationality. All cooperation measures in response to migrant smuggling at sea must be taken with consideration for Article 9 safeguard measures.

Beyond this, apprehending organised criminals behind sea smuggling requires international communication beyond operations that take place at sea. Investigations along the smuggling route from countries of origin to countries of final destination require exchange of information and communication, as prescribed by Article 10. Efforts to exchange information and communicate with partners in other countries are hampered by challenges including lack of trust, diversity of legal systems and law enforcement structures, absence of channels of communication, different approaches and priorities, and differences in language and culture.

Experts stress that the most important component of information exchange and communication is the role played by individuals in cooperating proactively while protecting security of information. Experts have had positive experiences when specific requests are made for specific information which can be provided as requested without compromising other information.

The role that international organizations, non-governmental organizations and other relevant organizations can play in international cooperation in addressing smuggling of migrants by sea is stressed. Article 14(2) notes that such cooperation is particularly useful in ensuring protection provisions of the Migrant Smuggling Protocol are upheld vis-à-vis processing migrants. A number of international and non-governmental organizations are active in relation to migration and as such may be valuable in contributing training expertise in this respect. Such entities can offer invaluable expertise with respect to international standards in regard to humane treatment of migrants and protection of their rights as required by Article 14(2)(e). Non-governmental organisations and civil service providers may be involved in at the community level in working with people who are vulnerable to being smuggled, or have been smuggled and need access to health care, legal and/or other services.

A particular challenge in addressing smuggling of migrants at sea is to ensure that international cooperation arrangements between countries of origin, transit and destination do not reduce the rights of people to seek asylum or humanitarian assistance in accordance with the 1951 Refugees Convention. Readmission agreements particularly run the risk of denying protection to people who need it, and if not implemented carefully, can place persons in even more dangerous situations than those they initially fled. Cooperative agreements and arrangements with UNHCR and OHCHR (the UN Office of the High Commissioner of Human Rights) can be invaluable in ensuring that such responses are compliant with international standards.<sup>141</sup> UNODC also has a role to play in facilitating international cooperation, most notably through technical assistance to implement the Migrant Smuggling Protocol, capacity building of those who investigate and prosecute smugglers, and in facilitating criminal justice cooperation between countries of origin, transit and destination.

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<sup>141</sup> See for instance, UNHCR Agreement with FRONTEX, <http://www.unhcr.org/4857939e2.html>, 17 June 2008, accessed on 9 September 2011.

### 3.4.2. Bilateral and regional cooperation

#### **Migrant Smuggling Protocol, Article 17, Agreements and arrangements**

States Parties shall consider the conclusion of bilateral or regional agreements or operational arrangements or understandings aimed at:

- (a) Establishing the most appropriate and effective measures to prevent and combat the conduct set forth in article 6 of this Protocol; or
- (b) Enhancing the provisions of this Protocol among themselves.

A key pull factor for migrant smuggling by sea is geography; the location of a particular coastal country can make it a target for smugglers. Transnational criminal organizations take advantage of vulnerabilities of States to smuggle migrants via seas, particular coastal and small island States in transit areas.<sup>142</sup>

#### **Bilateral cooperation**

Bilateral cooperation agreements between coastal countries of embarkation and intended disembarkation significantly reduce the numbers of migrants landing on destination country coasts. Cooperation at sea can be strengthened, for instance, by entering into agreements so that smugglers cannot avoid interception by crossing into territorial waters. At the operational level, some States have used ship-rider agreements as a means of strengthening cooperation at sea against smuggling of migrants. Under such arrangements, joint marine patrol and action can be carried out by exchanging maritime law enforcement officers between both countries. A law enforcement officer from one state can be designated to work on a patrol boat from another state. The officer is thereby able to enter the territorial waters of that state, for instance, in pursuit of a vessel suspected of migrant smuggling. Such an approach means that smuggling vessels cannot evade law enforcement interception simply by crossing maritime borders. The terms of agreement would generally limit the powers of persons serving in jurisdictions that are not their own. For instance, such persons may be permitted to play an active role in language translation upon interception, but not to carry out arrests of suspected smugglers.

#### **Regional cooperation**

The limits of bilateral cooperation agreements must be acknowledged. Bilateral cooperative policies may simply result in diversion of migrant smuggling routes, which may become longer and more dangerous for migrants concerned to evade detection. In other words, where criminal justice response along one route strengthens, the route and the modus operandi will be diverted to where no such cooperation has been achieved. This adaptability of smugglers to the cooperative responses of those who would stop them, underscores the need for authorities to cooperate quickly and widely, so that areas of impunity for smugglers are quickly removed. In this sense, the value of regional cooperation agreements has been emphasised.

Indeed, coastal states are not the only States affected by smuggling of migrants by sea. Many coastal countries of disembarkation are only transit countries in the wider smuggling route. Despite this, the mere fact of a country's location may mean it is abandoned to face the

<sup>142</sup>General Assembly resolution A/Res/64/71, paragraph 89.

challenge of smuggling by sea alone. Responses to smuggling by sea are strengthened when States along the smuggling route on either side of sea journey cooperate to ease the burden on coastal authorities at embarkation and disembarkation countries at the frontiers of a given region. Therefore, to reinforce the bilateral cooperation agreements between coastal countries, regional cooperation agreements should ideally be entered into to ensure that there is effective cooperation along the entire smuggling route.

### **Formal vs informal cooperation agreements**

Formal bilateral and/or regional agreements can be an effective means of combating migrant smuggling at sea. However, where one party to the agreement upholds their commitments more than others, the result can be that the bilateral agreement will be short-lived or count for little in practice. Some experts have reported that where cooperation attempts are overly formalised, States can be reticent to commit themselves to them. Additionally, once States have committed to such arrangements, formalised working processes prescribed therein can be prohibitive to efficient cooperation. To overcome these sticking points, informal, non-binding agreements have been suggested as useful in the fight against smuggling of migrants by sea. Where governments at the high levels enter into informal cooperative agreements to pursue mutual interests, the result is that the operational layers of their administration are provided with a framework for cooperating with each other.

### **3.4.3. Interagency cooperation**

Given the complexity of migrant smuggling by sea and its interrelationship with other issues, strong interagency cooperation is essential. Depending on the situation, competent agencies may be customs agencies, police, gendarmerie, border, military and navy. Prosecutorial and judicial personnel may be involved. Ministries of justice, security, interior, health, immigration, development and foreign affairs all have a role to play at the strategic and policy levels.

At the operational level, front line border officials can address migrant smuggling in coastal countries before boats depart and criminal investigators can identify smugglers in countries of origin, transit and destination. Where those actors do not succeed in disrupting smuggling operations, maritime actors will encounter migrant smuggling by sea situations, including the coast guard, naval and air forces. In assisting and processing intercepted migrants in coastal countries of arrival, immigration services will become involved, and investigators will need to conduct investigations through debriefing and interviewing. Depending on the migrants involved, protection and child services may be relevant. In addition to coordinating between these agencies, administrative systems in some States will also have to ensure that local, district and federal or national responses are coordinated. This can be logistically challenging particularly where local authorities are remotely located or otherwise difficult to communicate with.

At the strategic level, coordination meetings between representatives of relevant agencies ensure effective information sharing to ensure that various agencies involved are clear on their own role and the roles of others, so efforts are not duplicated and resources are not wasted. In some states, agency representatives come together a few times each year, in others they meet on a monthly basis and in other countries again they will meet daily. Some meetings may be in person, and others via teleconference. The frequency of such meetings depends on logistical

considerations such as locations of agencies, the cost of arranging meetings and of course the extent to which migrant smuggling by sea is prioritized.

To overcome the logistical challenges of coordinating response, the competent national authority designated under Article 8(6) of the Migrant Smuggling Protocol should lead coordination of agencies at the domestic level, and connect domestic response with regional and international cooperative activities in response to migrant smuggling by sea. The designated authority should be responsible for receiving requests from domestic authorities – customs, police and other law enforcement agencies – and be in a position to assist in receiving and transmitting requests to foreign States. Accordingly, the central authority designated should be imbued with necessary powers to address migrant smuggling by sea, particularly power to authorize another State party to take action against vessels flying its flag and to make outgoing requests for assistance.

## **4. SUGGESTIONS FOR CONSIDERATION AND DISCUSSION**

### **4.1 Encountering migrant smuggling at sea**

#### **4.1.1. Detection**

So as to increase detection of smuggling of migrants at sea:

- Provide sustained and on-going support to coastal states in detection of smuggling of migrants at sea, through joint patrols or patrols carried out by specialised agencies, and/or through the provision of technical and human resources.
- Particularly support small island States so as to ease their burden in patrolling search and rescue areas.

#### **4.1.2. Interception**

So as to ensure that interceptions at sea comply with the Migrant Smuggling Protocol:

- Implement international standards into domestic legislation where necessary to reflect the Migrant Smuggling Protocol as well as international and regional human rights law, international refugee law and other relevant regional or international instruments.
- Where there is suspicion of a serious crime taking place, such as smuggling of migrants by sea, take steps to instigate investigation of such crimes as efficiently as possible in the course of interception and exercise power to search and detain vessels or crew members as efficiently and with as much restraint as possible.
- Appropriately equip all persons involved in interception to assess and respond to special needs and/or vulnerabilities of persons on board intercepted boats, including by providing assessment tools, by putting in place response mechanisms and by providing training in appropriate responses when persons intercepted express international protection needs.

- In cases of interception in international waters followed by diversion to a cooperative third country, ensure the safety of people intercepted, rescued and/or disembarked on land, and the capacity of reception facilities to meet any medical needs of such persons.
- Make assistance available upon reception of intercepted persons, including medical care and appropriate referral to competent authorities.
- Support coastal and island states to establish, maintain and improve reception facilities for the provision of shelter and security, including by seeking appropriate international organisations and NGOs as key partners in efforts in this respect where appropriate.

#### **4.1.3. Rescue**

So as to ensure that migrants smuggled by sea are rescued in accordance with the global search and rescue regime:<sup>143</sup>

- Emphasise that the duty to rescue takes priority over other objectives by disseminating relevant provisions of maritime law and accompanying guidelines and any new amendments to shipmasters and government officials involved in rescue at sea operations.
- Urgently and comprehensively examine any allegations of failure to rescue persons at sea, including allegations of boats being refused assistance and/or being 'pushed back'. Use data recording instruments in vessels so allegations of intentional failure to rescue can be investigated.
- Put in place sanctions against vessels that ignore distress calls and do not rescue persons in distress at sea so as to hold to account those who do not fulfil obligations to help persons in distress at sea.
- Publicise sanctions imposed against persons for failure to rescue at sea so as to deter others from ignoring their obligations to do so.

So as to ensure appropriate disembarkation of smuggled migrants:

- Do not categorize interception operations as search and rescue operations, or use rescue as a pretext to undertake interception without grounds.
- Put in place plans and arrangements for disembarkation of persons rescued at sea and their delivery to a place of safety, ensuring that such disembarkation procedures are governed by the maritime regime, not by immigration control objectives.
- Put in place international cooperation agreements to process migrants smuggled by sea who claim asylum, particularly in times of crisis, so that States that receive persons rescued at sea do not have to bear the entire burden alone. Such cooperation agreements should operate to ensure that countries in the same destination region effectively streamline resources and capacities to support countries on the outer sea borders of that region.

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<sup>143</sup> The global search and rescue regime is governed by the 1974 International Convention for the Safety of Life at Sea and the 1979 International Convention on Maritime Search and Rescue



- Encourage shipmasters to promptly inform IMO, UNHCR and other relevant actors when disembarkation proves problematic or when rescued persons claim asylum.

So as not to deter shipmasters from fulfilling their duties to rescue persons at sea:

- Do not prosecute shipmasters for migrant smuggling crimes where they have rescued persons at sea, but rather support and acknowledge their role.
- Relieve shipmasters of responsibility to care for survivors as soon as practicable.
- Put in place compensation mechanisms for ships that suffer financial losses due to rescue.

#### **4.1.4. Assistance and protection**

So as to ensure that migrants smuggled at sea are appropriately assisted and protected:

- Where appropriate, involve qualified assistance and protection experts in providing training to criminal justice practitioners, as well as in monitoring and evaluating criminal justice responses to smuggling of migrants at sea.
- Particularly, ensure that protection and assistance is provided in accordance with the special needs of women and children as required by the Migrant Smuggling Protocol.
- Empower those responsible for processing asylum claims to do so with awareness of smugglers attempts to abuse such systems as a modus operandi of enabling stay of migrants smuggled at sea.

So as to maximize the investigative and prosecutorial advantages of assistance and protection of migrants smuggled at sea:

- Provide criminal justice practitioners with adequate training and resources to provide appropriate assistance to migrants intercepted at sea.
- In any policies and practices concerning the removal of smuggled migrants from countries of transit or destination, include mechanisms to allow smuggled migrants to assist criminal justice practitioners in investigations and prosecutions of smugglers, for instance through temporary residency permits allowing persons to remain for these purposes, or measures to allow them to testify from countries to which they are returned.

## **4.2 Investigation and prosecution**

### **4.2.1. Legislative Framework**

So as to ensure that smugglers of migrants by sea are not able to evade prosecution in States with inadequate legislative frameworks:

- Sign and ratify the UNTOC and the Migrant Smuggling Protocol supplementing it.
- Harmonize legislation in accordance with the Migrant Smuggling Protocol, so that smugglers of migrants by sea cannot escape harsh penalties in States that have not implemented adequate legislation to address the severity of crimes relating to smuggling

of migrants by sea.<sup>144</sup>

- Publicise sentences of smugglers of migrants by sea to deter others from committing crimes that put lives and safety at risk.

#### 4.2.2. Identification of smugglers on board boats

So as to strengthen identification of smugglers of migrants who are on board vessels at sea:

- Take all opportunities to investigate smuggling of migrants at sea, including through identification of perpetrators of smuggling crimes and other crimes committed in the course of migrant smuggling at sea. In this respect, prioritize investigation of aggravating circumstances including deaths resulting from migrant smuggling at sea. Efforts should be made to identify migrants who are dead or missing and to inform their countries of nationality so investigations of criminals behind smuggling of migrants by sea can be instigated or supported in countries of origin.
- Train first respondents to gather as much information and evidence as possible at the point of first contact with smuggling vessels and in particular to be alert for indicators that will help identify the smugglers.
- Support first respondents to pass relevant information and evidence on to investigating authorities.

#### 4.2.3. Investigating land-based smugglers

So as to strengthen investigation of land-based smugglers who organise migrant smuggling at sea:

- Fill gaps in intelligence by making use of existing databases at the national, regional and international levels and by raising awareness and understanding among persons collecting information, that what may be irrelevant information to them could be vital to investigators or prosecutors of smugglers in other agencies in the country or in other countries along the smuggling route.
- Empower officials to build confidence and trust with migrants rescued or intercepted at sea in order to gather information about land-based smugglers in countries of origin, transit and destination.
- Train investigators and prosecutors on the specificities of migrant smuggling by sea, the modus operandi of smugglers who use sea routes, the use of *hawala* or other informal banking systems, and international obligations prescribed by the Migrant Smuggling Protocol and other international instruments.<sup>145</sup>

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<sup>144</sup> The UNODC Model Law against Smuggling of Migrants provides guidance in drafting legislation in compliance with the Migrant Smuggling Protocol. For more information, see ANNEX – Relevant UNODC Resources.

<sup>145</sup> UNODC training materials on investigating and prosecuting smuggling of migrants can be used as a basis for training. For more information, see ANNEX – Relevant UNODC Resources.

- Ensure training is conducted regularly to keep practitioners up-to-date with changing laws, trends and evolving modus operandi of smugglers.

## 4.3 Prevention

### 4.3.1. Addressing root causes

So as to effectively and comprehensively prevent smuggling of migrants by sea in accordance with mandatory obligations under Article 15 of the Migrant Smuggling Protocol:

- In addition to addressing migrant smuggling as a crime, address the phenomenon as a business model, by reducing both demand for smuggling services by migrant ‘customers’ and the profit margins of smuggling service ‘suppliers’.
- In countries of origin, provide people who are specifically vulnerable to being smuggled with economic opportunities and incentives to remain in their home countries.
- In countries of destination, adopt policies that undermine efforts of smugglers to abuse protection obligations of States, while ensuring that refugees have access to protection.
- Encourage the development of bilateral and regional agreements between countries of origin, transit and/or destination that not only address smuggling of migrants as a crime but also incorporate development components to address its root causes.

### 4.3.2. Awareness raising

So as to raise awareness of persons vulnerable to being smuggled by sea:

- Raise awareness of potential smuggled migrants, of the following key points:
  - that there are regular avenues for migration;
  - that smugglers are criminals
  - that smuggling of migrants by sea puts lives and safety in jeopardy; and
  - that even if smuggling is successful it may not result in improved conditions for the smuggled person.

So as to raise awareness of smugglers to deter them from smuggling migrants at sea:

- Raise awareness of smugglers and potential smugglers that smuggling of migrants is a crime with criminal justice consequences.
- Publicise policies and responses to smuggling of migrants by sea so as to deter smugglers from smuggling migrants and sea.
- Publicise prosecutions and sanctions imposed on smugglers who have put lives in danger at sea to deter others from doing so.

So as to raise awareness of the public whose views may influence political and policy decisions with respect to migrant smuggling at sea:

- Encourage and empower the media to report about migrant smuggling at sea in a way

that is informed, fair, accurate and balanced.

#### **4.3.3. Intercept smuggling vessels before departure**

So as to prevent smuggling of migrants by sea from occurring:

- Emphasise and support the crucial role played by coastal states of departure in detecting smuggling vessels before they embark on sea journeys, through capacity building in investigating and prosecuting smuggling of migrants.
- Disrupt smugglers in the procurement of vessels for use in smuggling of migrants by sea, by requiring vessels to be registered and vessel sales to be reported to appropriate authorities.
- Disrupt smugglers in the commission of their crimes by implementing and/or strengthening asset seizure laws along smuggling routes, particularly in countries of origin and transit.
- Explore methods by which migrant smuggling by sea could be made more expensive for smugglers to commit, thereby reducing their profit incentives.

#### **4.3.4. Increased research, data collection and information sharing**

So as to mount evidence-based responses to migrant smuggling by sea:

- Carry out research into push and pull factors of migrant smuggling by sea, in the wider context of routes, processes and actors involved in smuggling of migrants by land and air.
- Particularly support countries of origin and transit to conduct research into causes of irregular migration, as well as routes, modes and methods used by migrant smugglers who provide services to irregular migrants.
- Increase research into structures and working methods of smugglers of migrants by sea, including the formal and informal financial systems used by smugglers, as well as research into financial flows and sums as well as their links with other types of crime.
- Increase research into the role of corrupt government officials in facilitating migrant smuggling.
- Collect and disaggregate data about migrant smuggling by sea in a consistent way across countries to achieve a harmonized global understanding of smuggling phenomena.
- Increase research on responses to migrant smuggling by sea and weaknesses in response in countries of origin, transit and destination, including policy and legislative responses, operational responses on sea borders, law enforcement and prosecutorial response as well as proactive prevention efforts.
- Share best practices and lessons learnt from research findings with States in relevant regions and along relevant smuggling routes, as well as with international organizations such as UNODC for the purposes of analysis and dissemination.

## 4.4 Cooperation

### 4.4.1. International cooperation

So as to remove areas of impunity along migrant smuggling routes:

- Increase capacity to use the Migrant Smuggling Protocol as a framework for cooperation against migrant smuggling by sea by seeking and/or providing technical assistance in this respect.
- Establish and maintain cooperative relationships along existing and potential smuggling routes by proactively creating relationships with counterparts in partner States.

So as to remove barriers to cooperation against migrant smuggling:

- Sign or ratify the UNTOC, the Migrant Smuggling Protocol, international human rights conventions, and the 1951 Refugees Convention and the 1967 Protocol and establish procedures in accordance with international standards.
- Consider how UNODC could strengthen its role in supporting and/or facilitating informal cooperation against migrant smuggling at sea and inform and empower UNODC accordingly.<sup>146</sup>
- Support origin, transit and destination partner States by sharing information and exchanging human and tangible resources including training and equipment, as well as cultural, linguistic and other expertise that may be relevant to the investigation and prosecution of migrant smuggling by sea.

So as to increase proactive response to migrant smuggling by sea:

- Prioritize intelligence gathering and information sharing about criminal smuggling networks behind irregular migration at sea along smuggling routes.
- Consider means by which specific and relevant information can be shared without compromising other sensitive information.
- Keep UNODC informed of activities to implement the Migrant Smuggling Protocol so best practices and lessons learnt from such activities can be effectively analysed and disseminated.

### 4.4.2. Bilateral and regional cooperation

So as to strengthen bilateral and regional cooperation against migrant smuggling by sea:

- Encourage and support coastal states of embarkation and disembarkation to regularly exchange information and expertise.

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<sup>146</sup> For instance, UNODC could support the work of States by conducting further research into migrant smuggling by sea and responses to it and/or by convening regular or ad hoc expert meetings to exchange information and experiences, and to facilitate further cooperative relationships between practitioners.

- Consider allowing admission of other States into territorial waters in pursuit of suspected smuggling by sea vessels.
- Consider use of ship-rider agreements for joint patrols of sea and joint responses to migrant smuggling by sea.
- Respond expeditiously to requests for verification for nationality and authorization to board suspected smuggling vessels.
- Clarify roles and responsibilities in cooperative agreements entered into, particularly in relation to who is responsible to admit intercepted smuggled migrants.

So as to provide a framework for informal, flexible and effective cooperative networks against smuggling of migrants by sea:

- Consider entering into non-binding, informal cooperative agreements with relevant countries.
- Encourage and facilitate direct communication between individual police and other relevant actors in partner countries along smuggling routes.
- Promptly respond to all requests for cooperation, whether to provide the cooperation requested, to request clarification about the type of cooperation sought, or to explain why such cooperation cannot be provided.
- Keep relevant partners in other States up-to-date and informed as to who is performing what roles in relation to migrant smuggling by sea and their contact details.

#### **4.4.3. Interagency cooperation**

So as to ensure that strategic and operational responses to migrant smuggling by sea adapt to rapidly changing trends and modus operandi of smugglers:

- Hold regular coordination meetings of relevant agency representatives and put systems in place to facilitate ad hoc meetings of relevant actors in response to specific situations.
- Conduct joint operations along major migrant smuggling routes using shipriders to take advantage of each agency's authorities, capabilities and competencies.

So as to ensure that the designated central authority is effective against migrant smuggling by sea:

- Locate the central authority so as to grant it access to the national shipping registry, and to easily coordinate with other domestic agencies including maritime law enforcement agencies.
- Put in place arrangements and allocate necessary resources to enable the central authority to operate on a 24-hour basis.
- Notify the Secretary General of the United Nations of the designation of a central authority, in accordance with Article 8(6) of the Migrant Smuggling Protocol.

- Provide UNODC with updated contact details of central authorities on smuggling of migrants by sea, including contact details for relevant individuals, hours of operation and languages in which requests can be processed.<sup>147</sup>

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<sup>147</sup>Information provided will be included on UNODC's online directory of competent national authorities to facilitate contact between all States parties. <http://www.unodc.org/compauth/en/index.html>.

## **ANNEX – Migrant Smuggling Protocol Extracts**

### **Part II - Smuggling of migrants by sea**

#### **Article 7. Cooperation**

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

#### **Article 8. Measures against the smuggling of migrants by sea**

1. A State Party that has reasonable grounds to suspect that a vessel that is flying its flag or claiming its registry, that is without nationality or that, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned is engaged in the smuggling of migrants by sea may request the assistance of other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance to the extent possible within their means.
2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying the marks of registry of another State Party is engaged in the smuggling of migrants by sea may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel. The flag State may authorize the requesting State, inter alia:
  - (a) To board the vessel;
  - (b) To search the vessel; and
  - (c) If evidence is found that the vessel is engaged in the smuggling of migrants by sea, to take appropriate measures with respect to the vessel and persons and cargo on board, as authorized by the flag State.
3. A State Party that has taken any measure in accordance with paragraph 2 of this article shall promptly inform the flag State concerned of the results of that measure.
4. A State Party shall respond expeditiously to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made in accordance with paragraph 2 of this article.
5. A flag State may, consistent with article 7 of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken. A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons or those which derive from relevant bilateral or multilateral agreements.
6. Each State Party shall designate an authority or, where necessary, authorities to receive and respond to requests for assistance, for confirmation of registry or of the right of a



vessel to fly its flag and for authorization to take appropriate measures. Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.

7. A State Party that has reasonable grounds to suspect that a vessel is engaged in the smuggling of migrants by sea and is without nationality or may be assimilated to a vessel without nationality may board and search the vessel. If evidence confirming the suspicion is found, that State Party shall take appropriate measures in accordance with relevant domestic and international law.

#### **Article 9. Safeguard clauses**

1. Where a State Party takes measures against a vessel in accordance with article 8 of this Protocol, it shall:
  - (a) Ensure the safety and humane treatment of the persons on board;
  - (b) Take due account of the need not to endanger the security of the vessel or its cargo;
  - (c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;
  - (d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.
2. Where the grounds for measures taken pursuant to article 8 of this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.
3. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect:
  - (a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; or
  - (b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.
4. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.

## ANNEX – Relevant UNODC Resources

### TOOLS

#### UNODC Competent National Authorities Online Database

The competent national authorities online database provides contact information for the competent authorities of more than 150 States or dependent territories that have been provided to UNODC, including information on specific procedures to follow in urgent cases. The online directory currently contains the contact information for over 600 competent national authorities organised according to thematic categories, one of which being smuggling of migrants by sea.<sup>148</sup>

<http://www.unodc.org/compauth/en/index.html>

#### UNODC International Framework for Action to Implement the Migrant Smuggling Protocol

The International Framework for Action seeks to assist Member States in the effective implementation of the Migrant Smuggling Protocol. The Tool comprises a narrative section and a table containing practical measures to be taken in implementing the Migrant Smuggling Protocol, intending to assist States to identify gaps in their responses to migrant smuggling and to put in place measures in accordance with international standards. Four pillars are addressed by the Framework for Action, aligned with the Migrant Smuggling Protocol; investigation and prosecution, protection and assistance, prevention and cooperation.

Forthcoming: <http://www.unodc.org/unodc/en/human-trafficking/publications.html>

#### UNODC Model Law against Smuggling of Migrants

The Model Law against Smuggling of Migrants has been developed to assist States in legislatively implementing the provisions contained in the Protocol against the Smuggling of Migrants. It aims to facilitate the review and amendment of existing legislation as well as the adoption of new legislation. The Model Law specifically addresses criminalization of smuggling of migrants, protection and assistance of smuggled migrants, coordination and cooperation among and between agencies, cooperation on smuggling of migrants at sea, and the processes related to the return of smuggled migrants. The Model Law is designed to be adapted to the needs of each State, whatever its legal tradition and social economic, cultural and geographical conditions.

The Model Law is available in Arabic, English, French, Spanish and Russian.

[http://www.unodc.org/unodc/en/human-trafficking/publications.html#Model\\_Law\\_SOM](http://www.unodc.org/unodc/en/human-trafficking/publications.html#Model_Law_SOM)

#### UNODC Mutual Legal Assistance Request Writer Tool

The Mutual Legal Assistance Request Writer Tool (MLA Tool) has been developed by UNODC to assist States to draft requests with a view to facilitating and strengthening international cooperation. The MLA Tool guides casework practitioners step-by-step through the request

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<sup>148</sup> [www.unodc.org/compauth/en/index.html](http://www.unodc.org/compauth/en/index.html)

process for each type of mutual assistance using a series of templates that prompt the drafter for information. The Tool then automatically consolidates all data entered and generates a correct, complete and effective request for final editing and signature. The MLA Tool requires virtually no prior knowledge or experience with drafting MLA requests, is easily adjustable to any country's substantive and procedural law, and enables users to retrieve key information on treaties and national legislation. The MLA Tool also integrates a case-management tracking system for incoming and outgoing requests.

The MLA Tool is currently available in English, French, Spanish, Russian, Portuguese, Bosnian, Croatian Montenegrin and Serbian. <http://www.unodc.org/mla/index.html>

### **UNODC Toolkit to Combat Smuggling of Migrants**

The Toolkit to Combat Smuggling of Migrants is offered to provide guidance, showcase promising practices and recommend resources across thematic areas. The purpose of the Toolkit is two-fold. In its entirety the Toolkit provides an overview of the immense and multi-faceted task of combating migrant smuggling. Through stand-alone Tools, the Toolkit provides guidance on specific aspects of response to migrant smuggling. The Toolkit is comprised of ten tools which address; understanding smuggling of migrants, actors and their processes, international legal framework, problem assessment and strategy development, legislative frameworks, international criminal justice cooperation, law enforcement and prosecution, protection and assistance, prevention and capacity building and training.

<http://www.unodc.org/unodc/en/human-trafficking/publications.html>

## **TRAINING MATERIALS**

### **UNODC Basic Training Manual on investigating and prosecution smuggling of migrants**

The Basic Training Manual on investigating and prosecuting smuggling of migrants is a practical guide and training tool for practitioners in countries of origin, transit and destination. The Basic Training Manual is designed in such a way that individual modules can be readily adapted to different country and regional contexts, and can serve as the basis for strengthening or supplementing training programs of national training institutes. Modules in the Manual address concepts and categories of migrant smuggling; the role of smuggled migrants and smugglers in investigations; investigative approaches; financial investigation; covert investigative techniques; intelligence; international cooperation and human rights.

The Basic Training Manual is available in Arabic, English, French, Russian and Spanish. <http://www.unodc.org/unodc/en/human-trafficking/electronic-basic-training-manual-on-investigating-and-prosecuting-smuggling-of-migrants.html>

### **UNODC In-depth Training Manual on investigation and prosecuting migrant smuggling**

The In-depth Training Manual is intended for use in the delivery of training to criminal justice practitioners, including law-enforcement agents and prosecutors. It builds on and complements the fundamentals covered in the Basic Training Manual for Investigating and Prosecuting Smuggling of Migrants. The In-depth Training Manual contains modules on understanding migrant smuggling and related conduct; comparative analysis of smuggling of migrants and trafficking in persons; detecting migrant smuggling; investigative approaches and the role of criminal justice practitioners; risk assessment; protection and assistance issues; international cooperation in criminal matters; law enforcement cooperation and information sharing;

intelligence; covert investigative planning, techniques and tactics; financial investigations and prosecutions; crime scene and physical evidence examinations; debriefing, interviews and testimony; common legal issues in investigations and prosecutions; and sentencing.

Forthcoming: <http://www.unodc.org/unodc/en/human-trafficking/publications.html>

## REPORTS

### **UNODC Smuggling of Migrants: A Global Review and Annotated Bibliography of Recent Publications**

The purpose of this thematic review is to survey existing sources and research papers on smuggling of migrants and to provide a gap analysis of existing knowledge from a global perspective. The overall goal of the Global Review is to enhance concrete understanding of the phenomenon. Chapters of the publication address conceptual challenges; methodology applied for researching smuggling of migrants; the scope of smuggling of migrants; profiles of smuggled migrants and migrant smugglers; relationships between smugglers and migrants; organizational structures of migrant smuggling networks; modus operandi and smuggling fees; and the human and social costs of smuggling of migrants.

[http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Smuggling\\_of\\_Migrants\\_A\\_Global\\_Review.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Smuggling_of_Migrants_A_Global_Review.pdf)

### **UNODC Smuggling of Migrants from India to Europe and in particular to the United Kingdom: a study on Tamil Nadu**

The aim of this study, commissioned by UNODC Regional Office for South Asia in collaboration with the Institute of Social Sciences, New Delhi is to assess the current extent and scope of irregular migration from Tamil Nadu with the objective of improving evidence-based knowledge on the profile of irregular migrants, the modus operandi of agents, the countries to which migration is destined, and the government response to curbing irregular migration.

[http://www.unodc.org/documents/human-trafficking/Smuggling\\_of\\_Migrants\\_from\\_India.pdf](http://www.unodc.org/documents/human-trafficking/Smuggling_of_Migrants_from_India.pdf)

### **UNODC Smuggling of Migrants from India to Europe and in particular to the United Kingdom: a study on Punjab and Haryana**

This report concludes a study into the scope and magnitude of irregular migration from the northern states of Punjab and Haryana in India. The study was based on law enforcement authority records, discussion with officials, public representatives, extensive field visits in districts of Jalandhar, Kapurthala, Nawanshahr and Hoshiarpur of Punjab and interviews with a large number of respondents, including irregular migrants and their family members, co-villagers of irregular migrants, agents involved in migrant smuggling and police officers who investigated cases against agents.

[http://www.unodc.org/documents/human-trafficking/Smuggling\\_of\\_Migrants\\_from\\_India\\_to\\_Europe\\_-\\_Punjab\\_Haryana.pdf](http://www.unodc.org/documents/human-trafficking/Smuggling_of_Migrants_from_India_to_Europe_-_Punjab_Haryana.pdf)

### **UNODC Smuggling of migrants into, through and from North Africa: A thematic review and annotated bibliography of recent publications**

This publication describes major findings on smuggling of migrants; into, through and from

North Africa, and highlights the need for further research on specific issues that have not yet been studied. The thematic review identifies several key areas requisite to understanding, addressing and criminalizing migrant smuggling. The literature reviewed is divided into thematic chapters including: quantifying irregular migration and smuggling of migrants, migrant smuggling routes, profiles and characteristics of smuggled migrants, smuggler-migrant relationships, organizational structures of migrant-smuggling routes, modus operandi of migrant smugglers, smugglers fees and the human and social costs of smuggling. The publication also entails an annotated bibliography of the reviewed literature.

[http://www.unodc.org/documents/human-trafficking/Migrant\\_smuggling\\_in\\_North\\_Africa\\_June\\_2010\\_ebook\\_E\\_09-87293.pdf](http://www.unodc.org/documents/human-trafficking/Migrant_smuggling_in_North_Africa_June_2010_ebook_E_09-87293.pdf)

### **UNODC The Role of organized crime in smuggling of migrants from West Africa to the European Union**

This report investigates the involvement of organized criminal groups in the smuggling of migrants from West Africa towards the European Union (EU). The publication contributes to better understand the underlying mechanisms and actors involved in this criminal process as a basis for policy reforms in countries affected. Information in the report was compiled by a team of researchers from West Africa and Europe using both documentary studies and field research conducted in Mali, the Niger, Nigeria and Spain.

[http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Report\\_SOM\\_West\\_Africa\\_EU.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Report_SOM_West_Africa_EU.pdf)

## **ISSUE PAPERS**

### **UNODC Issue Paper: A Short Introduction to Migrant Smuggling**

This issue paper offers a brief overview of the crime of migrant smuggling. It explains aspects of the crime as defined in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The paper also explores how the crime of migrant smuggling is committed, the roles played by individual criminal actors in the process, and the difference between migrant smuggling and the distinct but related crime of human trafficking.

[http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue\\_Paper\\_-\\_A\\_short\\_introduction\\_to\\_migrant\\_smuggling.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_A_short_introduction_to_migrant_smuggling.pdf)

### **UNODC Issue Paper: Migrant Smuggling by Air**

This Issue Paper is the result of an expert group meeting held in Vienna in December 2009, which brought together expert practitioners from all over the world. This Issue Paper explores the particular modus operandi of smuggling migrants by air and touches upon the various challenges involved in addressing this issue. The paper also offers some recommendations about strengthening and coordinating response to this issue.

[http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue\\_Paper\\_-\\_Migrant\\_Smuggling\\_by\\_Air.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Migrant_Smuggling_by_Air.pdf)

### **UNODC Issue Paper: Organized Crime involvement in trafficking in persons and smuggling of migrants**

UNODC, through the Institute for International Research on Criminal Policy (IRCP) of the Ghent University in Belgium, carried out a study on the links between organized crime, trafficking in persons and smuggling of migrants. The objective of this exercise was to provide insight into what is known on the involvement of organized crime in trafficking in persons and smuggling of migrants cases. Developing appropriate criminal justice responses to combat trafficking in persons and smuggling of migrants as forms of organized crime requires a knowledge-based response.

[http://www.unodc.org/documents/human-trafficking/FINAL\\_REPORT\\_06052010\\_1.pdf](http://www.unodc.org/documents/human-trafficking/FINAL_REPORT_06052010_1.pdf)

### **UNODC Issue Paper: Transnational Organized Crime in the Fishing Industry**

This Issue Paper considers the extent to which transnational organized crimes take place within the fishing industry, and the extent to which the legitimate fishing industry is vulnerable to transnational organized crime. The report focuses on trafficking in persons, smuggling of migrants and drug trafficking. The study has a global reach and considers a range of actors within the fishing industry as well as many different forms of criminal activities. Within this broad context, the objective of the study is to identify and highlight main trends and vulnerabilities to encourage further studies of these phenomena.

[http://www.unodc.org/documents/human-trafficking/Issue\\_Paper\\_-\\_TOC\\_in\\_the\\_Fishing\\_Industry.pdf](http://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf)



**UNODC**

United Nations Office on Drugs and Crime

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