



Tool 1.2 Distinguishing between trafficking in persons and smuggling of migrants

Overview

This tool discusses the differences between trafficking in persons and smuggling of migrants.

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

Article 3 (a) of the Migrants Protocol

Elements of migrant smuggling

Article 3 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime³ hereinafter referred to as the “Migrants Protocol” establishes that the offence is comprised of the following elements:

- Procuring the illegal entry of another person
- Into another State
- For the purpose of financial or material gain

Article 6 requires, among other things, the criminalization of the offence of migrant smuggling.

Key differences between trafficking in persons and migrant smuggling

The consequences of mistakenly treating a trafficking victim as a smuggled migrant can be very severe for the victim. In practice, it may be difficult to distinguish between a situation of trafficking and a situation of smuggling for many reasons:

- Smuggled migrants may become victims of trafficking
- Traffickers may also act as smugglers and use the same routes for both trafficking and smuggling
- Conditions for smuggled persons may be so bad that it is difficult to believe they consented to it

However, there are key differences between trafficking in persons and smuggling of migrants.

³The Migrants Protocol was adopted by the General Assembly in its resolution 55/25 of 15 November 2000 (annex III). It entered into force on 28 January 2004. The ratification status of the Protocol can be consulted at: www.unodc.org/unodc/en/treaties/CTOC/signatures.html.

**Consent**

- Smuggled migrants usually consent to being smuggled
- Trafficking victims have not consented or their consent is rendered meaningless by actions of the traffickers

Transnationality

- Smuggling involves illegal border crossing and entry into another country
- Trafficking does not necessarily involve crossing a border and where it does the legality or illegality of the border crossing is irrelevant

Exploitation

- The relationship between the smuggler and the migrant is a commercial transaction which usually ends after the border crossing
- The relationship between traffickers and their victims involves ongoing exploitation of the victims to generate profit for the traffickers

Another indicator is the source of the offender's profit.

- Smugglers generate profit from fees to move people
- Traffickers acquire additional profits through the exploitation of victims

	<i>Trafficking in persons (adults)</i>	<i>Trafficking in persons (children)</i>	<i>Migrant smuggling</i>
<i>Victim's age</i>	Over 18	Below 18	Irrelevant
<i>Mental element</i>	Intention	Intention	Intention
<i>Material element</i>	Act Means Exploitative purpose	Act Exploitative purpose	Act: procurement of an illegal entry Purpose: for financial or other material benefit
<i>Consent of the trafficked or smuggled person</i>	Irrelevant once the means are established	Irrelevant; means do not need to be established	The smuggled person consents to the smuggling
<i>Transnationality</i>	Not required	Not required	Required
<i>Involvement of an organized criminal group</i>	Not required	Not required	Not required