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**Sharing national procedures to investigate the
smuggling of migrants with a view to enhancing
international cooperation and the possible
harmonization of approaches**

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Background paper prepared by the Secretariat

I. Introduction

1. The present background paper was prepared by the Secretariat to facilitate the discussions of the Working Group on the Smuggling of Migrants at its ninth meeting. It sets out a series of issues that the Working Group may wish to address in the course of its deliberations and provides background information and policy considerations related to sharing national procedures to investigate the smuggling of migrants with a view to enhancing international cooperation and the possible harmonization of approaches in responding to the crime. The paper also includes examples of promising practices related to enhancing international cooperation, including through the sharing of information among authorities, with a view to strengthening responses to the smuggling of migrants. Lastly, it provides a list of specific references, resources and tools that States may use to further develop related responses to the smuggling of migrants.

II. Issues for discussion

2. With a view to enhancing international cooperation and the possible harmonization of approaches, the Working Group may wish to discuss the following aspects of national procedures to investigate the smuggling of migrants:

(a) Does national legislation criminalize the smuggling of migrants and related conduct in line with the definitions contained in the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime?

* [CTOC/COP/WG.7/2022/1](#).



(b) Do States only criminalize the smuggling of migrants where there is a clear intention to obtain, directly or indirectly, a financial or other material benefit, in line with article 6 of the Smuggling of Migrants Protocol?

(c) What positive examples can be identified of cross-border collaboration to exchange information for use in the investigation and prosecution of the smuggling of migrants?

(d) What have been the decisive factors in establishing currently effective platforms or other arrangements for the sharing of information among investigators and prosecutors on the smuggling of migrants?

(e) What key aspects of the procedures to investigate the smuggling of migrants in a foreign State are of the most importance to a national specialist seeking cooperation from that State?

(f) How can the United Nations effectively support States' efforts to share information and/or harmonize approaches in investigating the smuggling of migrants?

(g) How can existing forums, such as the Working Group on the Smuggling of Migrants, better contribute to facilitating the exchange of practices and discussion of challenges relating to the investigation of the smuggling of migrants among States parties?

(h) Have the discussions on responses to the smuggling of migrants and international cooperation on migration, culminating with the International Migration Review Forum, held in May 2022, produced positive consequences for national practitioners addressing the smuggling of migrants?

III. Overview of issues and guidance for response

3. Migration has been a consistent feature of human existence throughout history. Today, international migration is most often associated with advancing globalization and with global opportunities to drive progress and development while diffusing cultures and ideas around the world.

4. According to the latest global estimate by the United Nations, there were 281 million international migrants worldwide in 2020, equalling 3.6 per cent of the overall global population. The total number of international migrants has increased since 2000, when the United Nations estimated that there were 173 million migrants worldwide, or 2.8 per cent of the overall global population.¹

5. Profit-seeking criminals, however, often exploit to their advantage the movement of people, putting migrants' lives, rights and dignity at risk and threatening the capacity of countries to manage their borders in line with international obligations.

6. While people increasingly move in response to disasters and emergencies, to escape conflict, or as a result of increased unemployment and poverty, crossing borders legally remains difficult. This growing demand for migratory movement is often met by smugglers who operate along nearly all of the regular migration routes and provide migrants with a ready alternative: the possibility of crossing borders by illicit means.

7. The European Union Agency for Law Enforcement Cooperation (Europol) has estimated that, in 90 per cent of cases, irregular migration across European Union borders is facilitated in whole or in part by smugglers, often operating as networks spanning multiple countries along the migration routes to the European Union.² Migrant smugglers offer a variety of facilitation services beyond transportation,

¹ International Organization for Migration (IOM), *World Migration Report 2022* (Geneva, 2021).

² European Union Agency for Law Enforcement Cooperation (Europol), Crime areas and statistics, Crime areas, "Facilitation of illegal immigration". Available at www.europol.europa.eu/.

including the provision of food and shelter and the production and sale of fraudulent documents.

8. The smuggling of migrants, a highly profitable crime with a low risk of detection, is expected to continue to thrive along most migration routes globally, driven by conflicts, instability, economic crises and natural disasters, and the related need of people to migrate. The global business of smuggling of migrants generates an estimated minimum profit of \$5.5 billion per year.³

9. Criminals treat irregular migrants as commodities, prioritizing their own financial gains over the lives and well-being of migrants. Migrants are often forced into unseaworthy vessels or concealed in small, confined spaces for prolonged periods. While selling the dream of a “better life” abroad, migrant smugglers frequently do not hesitate to resort to violence or the threat of violence, including against migrants, law enforcement officers when avoiding apprehension and, occasionally, other smugglers active in the same area.⁴

10. Experience has shown that, in times of crisis, organized criminal groups react quickly, adapt and thrive. The situation under the coronavirus disease (COVID-19) pandemic is no exception, as migrant smugglers have adapted to tighter border control measures by resorting to less explored routes or more hazardous means of transport, putting the lives of migrants at increased risk.⁵

11. The International Organization for Migration (IOM) Missing Migrants Project has registered the deaths of almost 50,000 people on the move since 2014. Most of those deaths were a result of the illicit activities of smugglers operating along global migration routes.⁶

12. As countries strive to come to terms with such evolving practices, a lack of effective mechanisms or practices of bilateral and multilateral information-sharing and coordination of operations among prosecutors, law enforcement agencies, border control authorities and other relevant actors often undermines efforts to effectively combat the smuggling of migrants.

13. To successfully identify, track and dismantle the often complex migrant smuggling routes and effectively prosecute those who illicitly profit from irregular migration, coordinated prosecutorial and investigative strategies are needed, involving authorities from countries of origin, transit and destination along the various migration routes.

IV. Understanding the smuggling of migrants and investigating it in line with the Smuggling of Migrants Protocol

14. As detailed in the United Nations Office on Drugs and Crime (UNODC) *Global Study on Smuggling of Migrants 2018*, the organization and size of smuggling operations can vary greatly. Some smugglers provide limited, small-scale services such as river crossings or truck rides, usually operating individually and on an ad hoc basis. The profits generated by these small-scale smugglers are typically not substantial, but entire communities, particularly those in some border and transit areas, may depend on them. In such communities, smuggling-related activities may

³ United Nations Office on Drugs and Crime (UNODC), *Global Study on Smuggling of Migrants 2018* (United Nations publication, Sales No. E.18.IV.9).

⁴ European Union Agency for Law Enforcement Cooperation (Europol), *European Union Serious and Organised Crime Threat Assessment: A Corrupting Influence – The Infiltration and Undermining of Europe’s Economy and Society by Organised Crime* (Luxembourg, Publications Office of the European Union, 2021).

⁵ UNODC, “COVID-19 and the smuggling of migrants: a call for safeguarding the rights of smuggled migrants facing increased risks and vulnerabilities” (Vienna, 2021).

⁶ See <https://missingmigrants.iom.int/data>.

range from catering to providing telecommunication services for migrants en route to their destination.

15. Smugglers may also be organized in loose networks that do not involve strict hierarchies. In such cases, different stages of the smuggling process, such as facilitating a certain border crossing, recruiting a certain group of migrants, falsifying documents or preparing vessels for smuggling by sea, are carried out independently by various participants. Smugglers operating under these types of arrangements may maintain links with each other in a manner similar to that of legitimate commercial industries. Smugglers serving “broker” functions play pivotal roles in such systems, keeping the various smuggling actors in close proximity to each other.

16. Other smugglers are members of well-organized criminal organizations that have transnational links and that are capable of coordinating sophisticated smuggling operations, having a wide capacity to provide fake or fraudulent documentation to migrants. Smuggling of this nature is often organized into “packages” that involve migrants travelling long distances, using multiple transport modes.

17. The extent of sophistication of a particular smuggling operation depends largely on the availability and use of technology. Social media, the dark web and cryptocurrencies are typically used by organized migrant smuggling groups to conceal their crimes and smuggle migrants.

18. Noting the related challenges for the detection, tracking and prosecution of smuggling operations, resolute investigators and prosecutors are increasingly reliant on international and regional collaboration, which may involve networks or agreements that vary in terms of formal structure and function. Communication and the sharing of experiences with peers across jurisdictions may be the only way to fully comprehend the behaviour and functioning of migrant smugglers across borders.

19. An understanding of the constituent elements of the migrant smuggling offence and related conduct represents a first step in identifying its occurrence and consequently investigating and prosecuting its perpetrators. A common framework and uniform operational practice for identifying the smuggling of migrants facilitates the enhanced sharing of information and intelligence among countries, and as a result, helps to prevent and counter the crime more effectively. However, the definition and understanding of the smuggling of migrants still varies widely from country to country, as evidenced by available current criminal justice statistics, which indicate that most countries have continued to focus on defining the broader migration phenomenon, thus providing little insight into those who smuggle migrants for profit and the possible involvement of transnational organized criminal groups. It is interesting to note in that regard that the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto will focus on criminalization aspects during its first review phase and will generally support States parties’ review of their implementation of the Smuggling of Migrants Protocol.

20. Consequently, it is difficult to accurately determine the extent of the smuggling of migrants at the national, regional and global levels, owing to dissimilar and/or inconsistent responses and the lack of reliable, systematically collected data. The smuggling routes, the profiles and methods of the criminals involved, the risks faced by smuggled migrants and the impact of the smuggling of migrants on individuals and communities, as well as the factors that shape the smuggling industry, including its root causes, all still need to be explored further.⁷

21. Regarding criminalization, as specified in the Smuggling of Migrants Protocol, the offence of smuggling of migrants applies only to those who obtain a financial or other material benefit from the smuggling of migrants and related conduct. The *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations*

⁷ States have repeatedly discussed these issues, including at the multi-stakeholder dialogue organized by UNODC and IOM in January 2022 in preparation for the International Migration Review Forum in 2022; see <https://migrationnetwork.un.org/migration-dialogues>.

*Convention against Transnational Organized Crime and the Protocols Thereto*⁸ clarify that the criminalization should not cover individuals such as family members or non-governmental or religious groups that facilitate the illegal entry of migrants for compassionate, humanitarian or non-profit reasons.

22. International forums, such as the working groups of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, provide a useful platform for the exchange of practices, the discussion of challenges and the broader harmonization of approaches in addressing the smuggling of migrants. Other intergovernmental forums and mechanisms, in particular at the regional and interregional levels, also provide opportunities for enhanced sharing of operational and time-sensitive information. These include the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, focused on the Asia-Pacific region and comprising 49 members, including States and international organizations; the Budapest Process, covering a region comprising more than 50 States and stretching from Europe to the Silk Road region; and the European Union-Horn of Africa Migration Route Initiative (Khartoum Process), which is a forum for political cooperation among countries along the migration route between the Horn of Africa and Europe.

23. In such processes, States regularly underline their commitment to matching their crime prevention and criminal justice efforts to address the smuggling of migrants with strong measures to protect smuggled migrants. Protecting the rights of migrants is one of the purposes of the Smuggling of Migrants Protocol, as set out in its article 2. Furthermore, in accordance with article 5 of the Protocol, migrants are not to become liable to criminal prosecution for the fact of having been smuggled. In preparation for the dedicated thematic discussion on the smuggling of migrants held at the reconvened thirtieth session of the Commission on Crime Prevention and Criminal Justice, the United Nations Network on Migration underlined this by calling upon States to enhance their cooperation efforts to effectively address the smuggling of migrants, while protecting and fulfilling the human rights of migrants.⁹

V. Other illicit activities related to the smuggling of migrants, and challenges in investigating the crime

24. Migrant smugglers may also be engaged in the commission of other crimes, such as trafficking in persons, money-laundering, forgery of documents, and sham marriages. Far too often, the smuggling of migrants is confused with other crimes, in particular trafficking in persons. In most cases, these interconnections increase challenges for national authorities in designing and implementing adequate responses based on effective investigations.

25. A variety of actors continue to conflate the smuggling of migrants and trafficking in persons, from media outlets that use such terms interchangeably to State authorities that at times misuse anti-trafficking responses to address irregular migration more broadly.

26. In a significant number of cases, it may be difficult in practice to distinguish a case of smuggling of migrants from one of trafficking in persons. The scenarios involved in such cases may be so similar that an investigator or prosecutor may be tempted to treat them in the same way.

27. The smuggling of migrants does not necessarily involve the victimization of the migrant, which is one of the defining elements of trafficking in persons. As a matter of fact, in most cases, migrants agree to be smuggled across borders. As evidence shows, nonetheless, violence or abuse endangering the lives or infringing on the rights of smuggled migrants is often perpetrated by smugglers, thus causing migrants to

⁸ United Nations publication, Sales No. E.06.V.5.

⁹ United Nations Network on Migration, “Countering Criminals Protecting Migrants”, 17 May 2021.

become victims of those crimes against their person. There is also the possibility that smuggled migrants might retract their initial consent during a smuggling operation (for example, if they deem the conditions of transportation to be too dangerous) and might subsequently be forced to continue taking part in the smuggling operation (for example, a smuggled migrant who is physically forced to enter a vessel or container).

28. Regardless of whether this conflation is the result of insufficient understanding of the issue or is deliberate, it has far-reaching implications for migrants. For example, migrant victims of trafficking in persons may not be identified as such and consequently may not benefit from the protection elements set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and implemented in most States. More broadly, a misinterpretation of the crime type might influence the investigation of traffickers and the disruption of organized crime networks engaging in the crime.¹⁰

29. In some regions, a link can also be drawn between terrorist financing and migrant smuggling operations. Terrorist groups may directly or indirectly facilitate the smuggling of migrants to finance their operations, especially if they control territory that coincides with smuggling routes. In addition, migrant smuggling networks may sometimes pose terrorism risks, for example, by helping returning foreign terrorist fighters conceal their movements.¹¹ It is reported that such dynamics vary globally, with terrorist groups extorting tolls from smugglers along some migration routes in Africa and the Middle East, whereas limited interplay between smugglers and terrorists is still being registered in Europe and North America.¹²

30. Robbery and kidnapping are also systematic along many overland smuggling routes. A recent study conducted in North Africa estimated that 75 per cent of the people on the move interviewed had been subjected to extortion, robbery and/or kidnapping during their journeys.¹³ Abductions and kidnapping for ransom are often linked with the presence of militias and armed groups operating in the area.¹⁴

31. There is also a close connection between corruption and the smuggling of migrants. Migrant smuggling routes generate revenues not just for smugglers but, at times, also for corrupt law enforcement actors. Frequently, smuggling fees include bribes to be paid to police officers, border guards, military personnel or armed groups at border crossing points. Paying bribes to government officials and non-State actors claiming territorial control is common in a variety of locations worldwide. Bribes are typically paid in cash and almost exclusively negotiated by smugglers. Bribes are paid according to the rank of officials, with higher-ranking officials demanding larger sums for acts of corruption that are more systematic and ongoing.¹⁵

32. Investigations into the smuggling of migrants are challenged by such complex scenarios and require the involvement of teams specializing in different types of crime. Consequently, a significant obstacle may be the lack of collaboration between relevant units at the national and international levels, as well as difficulties encountered in partnering with relevant private sector actors, including banks.

33. The role of the private sector, primarily the financial and banking sector, is key in supporting the role of authorities. Effective financial investigations and financial intelligence analysis supported by private sector actors can greatly support the efforts of law enforcement and prosecution agencies. They allow criminal justice entities to identify and better understand the structure, *modi operandi* and involvement of organized crime syndicates and individuals by following the trail of the money generated. The use of financial evidence and the confiscation of the proceeds of the

¹⁰ IOM, *World Migration Report 2022*.

¹¹ Financial Action Task Force/Organisation for Economic Co-operation and Development, *Money Laundering and Terrorist Financing Risks Arising from Migrant Smuggling* (Paris, 2022).

¹² Ibid.

¹³ UNODC Observatory on Smuggling of Migrants. Available at www.unodc.org/res/som/index.html.

¹⁴ S/2020/785.

¹⁵ UNODC Observatory on Smuggling of Migrants.

crimes ultimately result in more effective prosecution and disruption of criminal activities.

34. Delayed and overly bureaucratic processes may also have a negative impact on investigations under time-sensitive circumstances, especially when cross-border activity is required.

35. The uneven availability of resources for border management among countries along migration routes puts an additional strain on the capacity of developing countries to detect irregular migration. Countries situated along the principal migration routes, in proximity to the countries of origin of migrants, or countries that have an extensive land or sea border and limited resources for border management, are often overburdened and do not have the capacity to promptly respond to requests for collaboration from neighbouring countries.

VI. Promising examples of cross-border collaboration and information-sharing exercises enhancing responses to the smuggling of migrants and related forms of crime

36. Currently, a number of structured or more informal initiatives are being carried out to enhance international cooperation among investigators and prosecutors with a view to better responding to the smuggling of migrants. These efforts respond primarily to the need to streamline international cooperation and enable the sharing of resources and information on the crime.

Regional initiatives

37. The Africa-European Border and Coast Guard Agency (Frontex) Intelligence Community was launched in 2010 to promote regular information exchange on the smuggling of migrants and other border security threats affecting African countries and the European Union. It brings together border security analysts from Frontex and partner authorities in Africa. A central element of the network are risk analysis cells, run by local analysts trained by Frontex.¹⁶

38. The Ibero-American Network of Prosecutors Specialized in Trafficking in Persons and the Smuggling of Migrants¹⁷ was formed in 2011 within the Ibero-American Association of Public Prosecutors and is supported by UNODC. Its 21 member countries have each designated a national contact point to integrate the network into their national criminal justice architecture, while the attorneys general in charge of each of the national public prosecutor's offices have agreed on common objectives. This informal network seeks to enable ready and practical communication channels in response to the delays associated with international legal cooperation instruments. A protocol on inter-institutional cooperation to address the smuggling of migrants and trafficking in persons was adopted in 2017 with the support of UNODC. The protocol allows the different national public prosecutor's offices to function as an informal cooperation network and facilitates the comprehensive and timely protection of victims of crime. In addition, the Ibero-American Network holds annual meetings of its contact points, at which good practices and information on cases are exchanged. The protocol is primarily a tool to facilitate the exchange of information across jurisdictions and enhance investigations carried out by the countries involved. It also contains a specific section on victim protection and assistance and obligations regarding the confiscation of the proceeds of crime, in order to guarantee the adequate compensation of victims.

¹⁶ The Africa-Frontex Intelligence Community meets regularly in Europe and Africa. A recent meeting was held in Senegal in late 2021. More information on the meeting is available at <https://frontex.europa.eu/media-centre/news/news-release/africa-frontex-intelligence-community-meets-in-senegal-srP1tC>.

¹⁷ <https://www.aiamp.info/index.php/redes-permanentes-aiamp/red-de-trata-de-personas> (in Spanish).

39. The European Public Prosecutor's Office (EPPO) is the newly formed independent public prosecution office of the European Union. It is responsible for investigating, prosecuting and bringing to judgment crimes against the financial interests of the European Union. These include several types of fraud, including value added tax-related fraud involving damages greater than 10 million euros and fraud involving procurement-related expenditures, corruption and related money-laundering and organized crime. EPPO carries out investigations and prosecutions and exercises prosecutorial functions in the competent courts of the participating European Union member States. Before its establishment, only national authorities could investigate and prosecute these crimes, but their powers were confined within their national borders. EPPO bridges such gaps between the jurisdictions of European Union member States through effective judicial integration. Since the inception of its operations on 1 June 2021, EPPO has registered more than 2,500 crime reports from participating European Union member States and private stakeholders. More than 500 investigation files have been opened, with some crime reports still under evaluation. Discussions are currently ongoing on the extension of the jurisdiction of EPPO to crimes perpetrated in the context of migration.

40. More recently, international cooperation on countering the smuggling of migrants has increased in the Mediterranean region. Law enforcement authorities of Mauritania, Morocco, Senegal and Spain routinely conduct joint international counter-smuggling investigations to halt the deadly business of migrant smugglers on the western Mediterranean migration route. Two of these investigations resulted in the extradition of suspected offenders from Mauritania and Morocco in 2021. Bilateral judicial cooperation between Morocco and Spain has also been reinforced in recent years.¹⁸

UNODC resources and initiatives

41. The knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC) is developed and maintained by UNODC to facilitate the dissemination of information regarding the implementation of the United Nations Convention against Transnational Organized Crime and its three Protocols, as well as the international legal framework against terrorism. SHERLOC includes an online directory of competent national authorities containing the contact information of national authorities authorized to receive, respond to and process requests for assistance in matters related to, inter alia, the smuggling of migrants. The directory provides the staff of national authorities with easy access to the updated contact information of their counterparts, as well as information on means of communication, accepted languages, legal requirements for cooperation and specific procedures to be followed in urgent cases. It also provides direct access to relevant pieces of national legislation and national templates or guidelines.

42. The UNODC case law database on the smuggling of migrants, available on SHERLOC, contains more than 800 cases from almost 50 countries and is acknowledged as a key tool for the exchange of relevant information and mutual learning among national authorities, supporting enhanced efforts to harmonize approaches to the investigation and prosecution of migrant smuggling cases.

43. The UNODC Voluntary Reporting System on Migrant Smuggling and Related Conduct has been in operation since 2013 under the auspices of the Bali Process. The Voluntary Reporting System helps participating States and territories share data and facilitates analysis of the migrant smuggling phenomenon with a view to strengthening responses through evidence-based data. A total of 26 countries and territories participate in the system, which covers South-East Asia, as well as other regions. The tool offers approximately 500 separate reports and includes information on such matters as the routes and means of transportation used to smuggle migrants and profiles of both smugglers and those smuggled.

¹⁸ UNODC Observatory on Smuggling of Migrants.

44. International cooperation among national authorities is often directly fostered by various United Nations entities. Since 2018, UNODC has supported the deployment of prosecutors from African countries to Italy and Spain under the PROMIS (Protection of migrants: justice, human rights and migrant smuggling) project in order to enhance international judicial cooperation between the partner countries on cases related to trafficking in persons, the smuggling of migrants and other crimes, in accordance with article 18 of the Organized Crime Convention. An innovative aspect of this initiative is that, for the first time, prosecutors from sub-Saharan countries are being deployed to European countries as liaison magistrates to liaise between the national central authorities of the deploying countries and the host countries. The liaison magistrates maintain all their prosecutorial powers and rely on the national central authorities of the deploying and host countries for international judicial cooperation.

45. UNODC is further engaged in promoting mutual learning and the exchange of practices between multiple stakeholders, including law enforcement and judicial authorities, and representatives of civil society and academia. In 2021, UNODC organized multi-stakeholder training courses on, inter alia, investigating and prosecuting the smuggling of migrants and protecting the rights of migrants for criminal justice practitioners and other relevant counterparts from civil society and academia in Bosnia and Herzegovina and Montenegro. The purpose of that capacity-building effort was to increase the understanding, knowledge, expertise and skills of criminal justice practitioners to effectively investigate and prosecute migrant smuggling cases, thus concretely addressing one of the world's major migrant smuggling routes, the so-called Balkan route.

Global policy efforts

46. At the policy level, responses to the smuggling of migrants are often integrated into broader migration management efforts, and there are signs of an increased commitment among countries to finding shared perspectives, frameworks and approaches, in particular along the various migration routes.

47. At the global level, the appetite for an internationally agreed agenda for cooperation on migration has led to the development of the Global Compact for Safe, Orderly and Regular Migration, a milestone in international migration policy development, adopted in December 2018. Structured into 23 objectives and informed by 10 guiding principles, the Global Compact establishes a comprehensive policy framework to address all aspects of migration, to the benefit of migrants, host communities and, more broadly, countries of origin, transit and destination.

48. Objective 9 of the Global Compact (Strengthen the transnational response to smuggling of migrants) contains a number of commitments related to strengthening capacity and international cooperation to prevent, investigate, prosecute and penalize the smuggling of migrants in order to end the impunity of smuggling networks while protecting the rights and well-being of migrants. Under the same objective, signatories committed themselves to ensuring that migrants did not become liable to criminal prosecution for the fact of having been the object of smuggling, to identifying smuggled migrants to protect their human rights, taking into consideration the needs of women and children, and to providing particular support to migrants subject to smuggling under aggravating circumstances. Aggravated migrant smuggling offences are defined in article 6, paragraph 3, of the Smuggling of Migrants Protocol as circumstances that (a) endanger, or are likely to endanger, the lives or safety of the migrants concerned; or (b) entail inhuman or degrading treatment, including for exploitation.

49. A review of the implementation of the Global Compact was started in 2020 at the regional level and culminated in a review at the global level at the first International Migration Review Forum, held in May 2022 under the auspices of the General Assembly. The Forum presented the international community with a vital opportunity to reinforce the relevance and timeliness of the Global Compact, assess

its impact to date and ensure that it is brought to bear in equipping societies for future challenges.¹⁹ During the Forum, experts from participating States discussed the smuggling of migrants and other related concerns at a dedicated round table discussion co-chaired by Ecuador and Tajikistan and facilitated by UNODC and IOM. The four thematic round tables held during the Forum, each focusing on a specific cluster of Global Compact objectives, offered a platform for multi-stakeholder discussions aimed at reviewing the progress made in the implementation of the Global Compact at the global, regional and national levels.

VII. Conclusion

50. Smugglers seize opportunities created by people's need to escape poverty, a lack of employment, natural disasters, conflict or persecution and by the reduced availability of pathways for regular migration. Migrant smuggling networks transcend international borders and can only be faced by agile and structured networks of authorities. International and regional cooperation at the law enforcement, judicial and policy levels play a crucial role in countering the smuggling of migrants, especially when institutions and resources are under great strain, such as in crises similar to the COVID-19 pandemic.

51. Extensive resort to sophisticated digital technologies, as well as the use of social media and encrypted communications, will increasingly enable migrant smugglers to advertise their services, coordinate their operations and recruit customers, and thus more easily evade detection by law enforcement officials. Digital services and tools are also frequently used by migrant smugglers to facilitate communication, money transfers, migrant pickup and delivery, route guidance and the broad exchange of documents and currency.²⁰ In the near future, it is expected that the use of cryptocurrencies by migrant smuggling networks will grow, threatening traditional financial investigations.

52. The UNODC case law database on the smuggling of migrants signals that a significant number of States are active in monitoring the evolution of the smuggling of migrants, but, at the same time, publicly available information and shared practices and results vary significantly. Despite indications of progress made by States in the investigation of migrant smuggling offences, limited cross-border knowledge and understanding of related countries' national procedures and investigatory approaches has had a direct impact on international cooperation, and consequently on efforts to provide a sustained global response to the smuggling of migrants.

53. The smuggling of migrants requires a holistic approach encompassing broader migration management approaches, as efforts to reduce such smuggling by targeting only one of its elements or contributing factors, including push or pull factors of migration, will not necessarily result in its decrease.²¹ For example, a major focus on border controls, with little attention paid to providing pathways for regular migration, may result in a greater reliance among people on the move on the services of profit-seeking smugglers.

54. One key reason for the existence of smugglers is the prevailing high demand for their services in certain markets. To respond to that demand, the provision of dynamic and more accessible pathways for regular migration is often mentioned as a counter-smuggling measure, as such pathways offer a safer way of moving that contributes to decreasing the demand for the services of smugglers.²²

55. The Smuggling of Migrants Protocol is not a migration management instrument. Its operative provisions are silent on States' approaches to migration management,

¹⁹ [A/76/642](#).

²⁰ Europol, *European Union Serious and Organised Crime Threat Assessment*.

²¹ International Centre for Migration Policy Development, "7 takeaways on emerging challenges in the area of migrant smuggling", 26 January 2022.

²² Ibid.

beyond explicitly respecting and protecting State sovereignty (pursuant to art. 4 of the Organized Crime Convention). In its preamble, however, the States parties recalled the urgency of addressing the causes of migration while maximizing its benefits for development. Furthermore, the provision in article 11, paragraph 1, of the Protocol, on strengthening border controls against smuggling, is set forth without prejudice to international agreements relating to the free movement of people.²³

56. The criminal justice response to the smuggling of migrants is only one component of a comprehensive approach to migration management. Focusing on transnational organized crime alone does not address the underlying causes and drivers of migration and smuggling. The smuggling of migrants will only ever be stopped if the determinants behind it are also addressed.

57. In countries of origin, root causes of the smuggling of migrants include socioeconomic drivers of human mobility, including poverty, discrimination, persecution, conflict, crises and lack of access to livelihood and economic opportunities, that push people to seek the services of smugglers, or indeed into providing smuggling services for profit. Organized criminals may take advantage of gaps or opportunities left unaddressed in border, migration and labour management policies in countries of transit and destination. The demand for and cost of smuggling services to circumvent border controls may increase with the institution of more restrictive border controls.

58. When the authorities of countries of origin, transit and destination do not effectively cooperate in their efforts to prevent the smuggling of migrants, criminals may be able to exploit weak criminal justice systems in some of those countries to find new routes to smuggle migrants.

59. Article 27 of the Organized Crime Convention contains several mandatory provisions that offer a framework and a basis for international cooperation in preventing the smuggling of migrants. In addition, pursuant to article 19 of the Convention, joint investigations are conducted to ensure that migrant smuggling crimes are investigated properly at the bilateral or multilateral levels, as necessary. Furthermore, in its article 13, the Convention provides a framework for cooperation with regard to the confiscation of proceeds, equipment or other instrumentalities used for the smuggling of migrants.

60. The continuous exchange of information and practices among countries is crucial to establishing coordinated action against types of transnational crime such as the smuggling of migrants. Forms of cross-border collaboration such as formal or informal networks of practitioners, bilateral or multilateral agreements and intergovernmental forums such as the Working Group on Smuggling of Migrants are essential to providing for a continuous exchange of experiences and practices and designing joint responses to address challenges in investigating and prosecuting the smuggling of migrants.

Previous recommendations of the Working Group on related topics

61. The Working Group on the Smuggling of Migrants has, to date, formulated more than 200 recommendations advising States parties on the implementation of the Smuggling of Migrants Protocol. The subject matter to be addressed by the Working Group at its ninth meeting has been partially addressed at previous meetings of the Working Group as part of broader discussions on challenges and promising practices in criminal justice responses to the smuggling of migrants. Nonetheless, the existing variations in the investigative responses of States to the smuggling of migrants have not yet been a focus of discussion and exchange in the Working Group.

²³ UNODC and Regional Support Office of the Bali Process, “Understanding the Smuggling of Migrants Protocol” (Bangkok, 2021).

62. In examining practical measures and other aspects aimed at improving information-sharing related to investigating the smuggling of migrants, the Working Group has emphasized the following in its past recommendations:²⁴

(a) The importance of promoting effective and efficient sharing of information, including investigative findings, consistent with the respective domestic, legal and administrative systems of States;

(b) In recognition of the usefulness of informal cooperation and information-sharing in early operational stages to assist in the gathering of intelligence and evidence, the importance of providing criminal justice authorities at the national level with the appropriate instruments in order to facilitate direct informal communication and the exchange of information with relevant foreign competent authorities;

(c) The need to respond to the transnational criminal networks involved in migrant smuggling cases through cooperation and information-sharing between law enforcement authorities in source, transit and destination countries, and to provide training to enable these types of transnational investigations;

(d) The importance of bilateral and multilateral cooperation, including cooperation at the regional level and with neighbouring countries, in order to strengthen border control, conduct joint investigations, exchange operational information and intelligence informally and develop training programmes to raise the awareness of relevant actors;

(e) The necessity of expanding informal cooperation and information-sharing measures not only to address the investigation and prosecution of smuggling of migrants cases but also to protect the rights of smuggled migrants;

(f) The key relevance of convening forums for relevant experts and government officials to share best practices in combating the smuggling of migrants.

VIII. Key tools and recommended resources

63. The selected tools and resources listed below are available on the UNODC website (www.unodc.org), where a comprehensive overview of all tools and resources regarding the smuggling of migrants is also available.²⁵

COVID-19 and the smuggling of migrants: a call for safeguarding the rights of smuggled migrants facing increased risks and vulnerabilities (2021)

64. The UNODC thematic paper entitled “COVID-19 and the smuggling of migrants: a call for safeguarding the rights of smuggled migrants facing increased risks and vulnerabilities” focuses on the ongoing prevention and protection issues arising from the vulnerabilities faced by people on the move owing to the impact of the COVID-19 pandemic. It provides an account of the impact that COVID-19 has had on the traditional drivers of migration and the increased hardship and challenges that the pandemic has posed for people on the move, including while in transit, at borders, at reception facilities, in destination countries and upon return. It also presents considerations related to preventing the smuggling of migrants and strengthening the protection of smuggled migrants in national settings, in particular in crises such as the COVID-19 pandemic.

UNODC Observatory on Smuggling of Migrants (2021)

65. The UNODC Observatory on Smuggling of Migrants is a pilot project aimed at assessing the characteristics, drivers and impact of the smuggling of migrants in rapidly changing contexts. The Observatory collects and disseminates data,

²⁴ The recommendations can be found in UNODC, *Smuggling of Migrants: Compendium and Thematic Index of Recommendations, Resolutions and Decisions* (Vienna, 2021).

²⁵ See www.unodc.org/unodc/en/human-trafficking/resources.html.

information and analyses on the smuggling of migrants. The information is gathered through regular field research in countries of origin, transit and destination, and from people on the move, law enforcement authorities, civil society and other key actors, and is complemented by targeted surveys among people on the move and migrant smugglers in countries of origin and transit.

66. The Observatory website provides up-to-date evidence relating to the modus operandi of migrant smugglers, smuggling routes, financial aspects, and abuses suffered in the context of the smuggling of migrants. The information and analyses provided are essential to better understanding the phenomenon of the smuggling of migrants, better preventing and combating such smuggling and related crimes, and protecting the human rights of people who are smuggled.

Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response (2021)

67. The UNODC publication entitled *Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response*, on aggravated forms of smuggling of migrants and related gender dimensions, provides an analysis of the circumstances and experiences of smuggled migrants during the migration journey, including repeated episodes of sexual violence, abuse and exploitation, in particular among migrant women. The publication is aimed at identifying gender dynamics and providing guidance to Member States with a view to increasing protection and access to justice for smuggled migrants and strengthening overall responses to aggravated forms of smuggling of migrants, including by ensuring their appropriate criminalization.

Guidance note on regular pathways for admission and stay for migrants in situations of vulnerability (2021)

68. This guidance note, developed by the United Nations Network on Migration, is intended to support Member States and other stakeholders in building their capacity to analyse the need for, and to strengthen the design, implementation, monitoring and review of, pathways for admission and stay for migrants in situations of vulnerability. It addresses matters relating to the availability and flexibility of pathways, admission and stay procedures, and the resulting conditions and duration of relevant measures.

UNODC Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants (2021)

69. The *UNODC Toolkit for Mainstreaming Human Rights and Gender Equality into Criminal Justice Interventions to Address Trafficking in Persons and Smuggling of Migrants* was developed under the framework of the Global Action against Trafficking in Persons and the Smuggling of Migrants (GLO.ACT), a joint initiative of the European Union and UNODC that is being implemented in partnership with IOM. It is a collection of tools to help practitioners understand and incorporate human rights and gender equality into criminal justice responses to the smuggling of migrants and trafficking in persons.

Understanding the Smuggling of Migrants Protocol (2021)

70. The publication entitled “Understanding the Smuggling of Migrants Protocol”, published jointly by the UNODC Regional Office for Southeast Asia and the Pacific and the Regional Support Office of the Bali Process, is aimed at strengthening the understanding of the Smuggling of Migrants Protocol. It focuses in particular on the regional perspective of South-East Asia.

UNODC Global Study on Smuggling of Migrants (2018)

71. The *UNODC Global Study on Smuggling of Migrants*, the first such study published by UNODC, shows that migrant smuggling routes affect every part of the

world. The study is based on an extensive review of existing data and literature and provides insight into trends, smuggling routes and the profiles of smugglers and those smuggled.

The Concept of “Financial or Other Material Benefit” in the Smuggling of Migrants Protocol: Issue Paper (2017)

72. The study entitled *The Concept of “Financial and Other Material Benefit” in the Smuggling of Migrants Protocol: Issue Paper* examines legislation and case law among a broadly representative group of States in order to gain a comparative perspective on how the “financial and other material benefit” element of the international definition of smuggling of migrants has been understood and applied. It gives particular attention to the experiences and views of practitioners involved in investigating and prosecuting smuggling of migrants and related crimes. The principal purpose of the study is to contribute to more effective and consistent interpretation and implementation of the international legal obligations that States have assumed through their ratification of or accession to the Smuggling of Migrants Protocol and its parent instrument, the Organized Crime Convention.

International Framework for Action to Implement the Smuggling of Migrants Protocol (2011)

73. The publication sets out the International Framework for Action to Implement the Smuggling of Migrants Protocol, a technical assistance tool to assist Member States in implementing the Smuggling of Migrants Protocol. The Framework clarifies the objectives of the Smuggling of Migrants Protocol and provides recommendations on operational measures that can be taken to achieve the objectives in practice. The Framework is anchored in the purposes of the Protocol: to prevent and combat the smuggling of migrants and to promote cooperation among States parties to that end, while protecting the rights of smuggled migrants.
