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Impact of natural disasters, conflicts and crises, such as the COVID-19 pandemic, on trends in organized criminal groups and on routes for the smuggling of migrants, as well as good practices to support effective law enforcement cooperation during such crises to detect, investigate and prosecute such cases

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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 seventh meeting. It provides background information on the topic, including on the main challenges and related practices and sets out a series of issues that the Working Group may wish to address in the course of its deliberations. It also notes the previous work of the Working Group on related matters, and lists specific references, resources and tools that States may use to develop a response to smuggling of migrants.

II. Issues for discussion

2. Delegations may wish to consider the responses of their States to the following questions in preparing for the Working Group's deliberations:

(a) How have States parties enhanced their crime prevention and criminal justice responses to prevent organized criminal groups from benefiting specifically from crises?

* CTOC/COP/WG.7/2020/1.



(b) What specific vulnerabilities to crime have been identified during crises with respect to smuggled migrants and refugees, especially with regard to the coronavirus disease (COVID-19)? How have States sought to address these vulnerabilities?

(c) In responding to COVID-19, what practical measures have States parties undertaken to balance security and health concerns with the need to protect the human rights of all? Has the risk of broader policies inadvertently stimulating smuggling of migrants been considered?

(d) What good practices have been identified to support continuous law enforcement cooperation to address the smuggling of migrants? In the context of crises, what are the recurring gaps in law enforcement cooperation to address the smuggling of migrants?

(e) How might law enforcement cooperation be improved to respond to changes in migrant smuggling routes resulting from COVID-19?

(f) How can the United Nations, including through its relevant inter-agency coordination mechanisms, best support States parties' efforts to prevent, detect and counter the smuggling of migrants in times of crisis?

(g) What are the most relevant lessons learned in addressing the smuggling of migrants from past times of crisis?

3. To enhance preparedness for addressing the smuggling of migrants during or following a crisis, the Working Group may wish to consider, among others, the following actions to be taken by States parties:

- Ensure the establishment of a criminal offence of smuggling of migrants in line with the Smuggling of Migrants Protocol and enhance the standing capacity of law enforcement to detect, investigate and punish such crime.
- Implement broad cooperation schemes to systematically perform data collection on and analysis of the impact of crises, such as the current COVID-19 pandemic, on the smuggling of migrants.
- Enhance national and international coordinated responses to reduce the vulnerabilities of smuggled migrants, especially in time of crisis.
- Provide for targeted responses and protection measures to address the concerns about smuggled migrants becoming victims of crime, including trafficking in persons and other abuses.
- Promote migration management policies striking a balance between public health and security concerns, in full respect of human rights.
- Promote internal coordination, including with civil society, and international cooperation, including with international and regional organizations, to curb the demand for smuggling services.
- Promote wider law enforcement cooperation to address potential changes in migrant smuggling routes, for example, as a result of the COVID-19 pandemic.
- Support wider use of technology to facilitate access to judicial processes and enable the collection and provision of evidence, the submission of documents and the filing or adjudicating of motions or petitions to courts.
- Ensure accessible and affordable public services, such as health care and child and elderly care, and social protection floors for all, including migrants, regardless of status.

III. Overview of issues and related topics

4. Natural disasters, economic and other crises, and the outbreak, escalation, continuation and aftermath of conflicts can rapidly put an enormous strain on

societies, institutions and economies, impacting on the delivery of public services such as law and order, public health and assistance, as well as on personal safety. Migrants, refugees and internally displaced persons are among those who suffer particularly from large-scale events that are unforeseen, unpredictable and, very often, initially underestimated.

5. Times of crisis exacerbate the vulnerabilities of individuals and societies to organized crime, as institutions struggle to ensure the continuity of even the most basic forms of social assistance and justice measures, or struggle to provide timely support to economic sectors particularly hard hit by crises. Experience in several countries has shown that in times when the formal economic sector is under pressure for a prolonged time, organized criminal groups may quickly react, adapt and thrive.¹

6. Disasters and crises further impact on the capacity of public authorities to detect and respond to organized crime, further fragmenting the social responses and forms of assistance provided to the most vulnerable populations. While data on the impact of the COVID-19 pandemic continue to develop slowly, earlier crises, although more localized and of a different scale, do provide guidance regarding the complex impact of crises. Examples of natural disasters such as the Hurricane Katrina in the United States of America in 2005, the 2011 Tohoku earthquake and tsunami in Japan, the 2013 Typhoon Haiyan in the Philippines² or the most recent Cyclone Amphan in South Asia in 2020, have all caused significant displacement among populations, and had long-term negative social, economic and security consequences.³

7. With regard to the COVID-19 pandemic, additional challenges relate to the provision of the required disease prevention and health-care measures. Stranded migrants, refugees and internally displaced persons have in many instances been accommodated in temporary camps and other facilities which do not allow for social distancing and/or adequate sanitary facilities, thus increasing the risk of spreading the virus and creating outbreaks. The incidence of COVID-19 outbreaks in refugee camps, informal settlements and detention centres may result in a humanitarian disaster, especially where refugees, migrants and internally displaced persons are not accounted for in the pandemic plans of most countries.

1. Migrant smuggling and its main routes⁴

8. Migrant smuggling is a highly profitable business, with criminal networks thriving on high demand for smuggling services and a low risk of detection and punishment. The crime is driven by political instability and conflict, severe socioeconomic conditions and a lack of opportunities, including for children and youth. This can motivate people to migrate in search of safety and/or improved conditions that, coupled with limited legal pathways that do not satisfy the diversified demand for regular migratory movement and obstacles to independent movement, lead people to rely on the services of intermediaries. In 2017, the International Organization for Migration estimated⁵ that the smuggling business was worth around \$10 billion per year globally. These figures are strongly influenced by the capacity of States of origin, transit and destination to prevent, detect and investigate this crime. They also vary according to circumstances such as the current COVID-19 pandemic, which, at least in the short term, has made some forms of migrant smuggling more complicated. At the same time, the response to the pandemic has made detection in

¹ Keith Ditcham, "How Covid-19 is changing the organised crime threat", Royal United Services Institute, Commentary, 24 March 2020.

² International Organization for Migration and International Labour Organization, *Impact of Livelihood Recovery Initiatives on Reducing Vulnerability to Human Trafficking and Illegal Recruitment: Lessons from Typhoon Haiyan* (2015).

³ Office for the Coordination of Humanitarian Affairs, Asia-Pacific COVID-19: Humanitarian Data Portal. Available at <https://interactive.unocha.org/data/ap-covid19-portal/>.

⁴ *Global Study on the Smuggling of Migrants 2018* (United Nations publication, Sales No. E.18.IV.9), pp. 33–36.

⁵ International Organization for Migration, Migration Data Portal. Available at <https://migrationdataportal.org/themes/trafic-illicite-de-migrants#recent-trends>.

some respects more difficult as the demand for services changes and smugglers adapt their practice. Nevertheless, research on migrant smuggling along various routes indicates that COVID-19-related travel restrictions have not stopped migrant smuggling and may in fact, in the medium-to-long term, increase demand for migrant smuggling.⁶

9. Migrant smuggling fees vary according to a number of factors, including the profile of the person to be smuggled, the distance to the destination, geographical conditions along the route, the number of borders to be crossed and the relative difficulty of crossing them. Additional factors include the stringency of border control, the means of transport, the duration of the journey, the required level of sophistication of fraudulent documents and the overall risk of detection.

10. The smuggling of migrants is a crime which starkly contradicts the principles of good migration governance as acknowledged in the Global Compact for Safe, Orderly and Regular Migration,⁷ adopted by the General Assembly in December 2018. Among its 23 objectives for better migration outcomes, the Global Compact makes a specific reference to countering the smuggling of migrants.

11. Worldwide, more than 30 main smuggling routes are identified in the *Global Study on the Smuggling of Migrants 2018*,⁸ published by the United Nations Office on Drugs and Crime (UNODC), demonstrating that smuggling of migrants is a truly global phenomenon that adapts to the peculiarities of the various territories, routes and profiles of the people being smuggled: ranging from intra-African routes from West, Central and East Africa towards North and Southern Africa, to routes from South, South-East and East Asian countries towards Europe and the Middle East, or to wealthier countries in South-East Asia and the Pacific; from the Mediterranean Sea routes from North Africa and Turkey to Europe, to land routes between Latin America and North America; and from the myriad air passages undertaken with counterfeit or fraudulently obtained documents to hazardous overland journeys across deserts and mountains.

12. Among those arriving along these routes, a significant proportion of people on the move originate in countries affected by conflict, humanitarian crises, long-lasting political instability and turmoil and/or prosecution, and are thus potentially entitled to international protection.

13. As with most forms of crime, the profile of migrant smugglers is predominantly of adult male offenders, of an average age between 30 and 35 years.⁹ Often, smugglers have the same national and/or ethnic background as those they smuggle, or they are from the regions that the smuggling routes lead through. More recent trends suggest that many smugglers may themselves have been previously smuggled. Smuggling enterprises can be sophisticated organized criminal groups or loosely affiliated groups that pool their skills and resources. More sophisticated groups have the ability to operate in larger areas, linking countries and continents and can make significant profits, while smaller, loosely based organizations and actors are more closely tied to the demand for their services in their communities, and the profit available to them may be less significant.

14. Migrant smugglers may seek to maximize their profits to the detriment of refugees' and migrants' safety and well-being, often squeezing hundreds of refugees and migrants onto unseaworthy boats – including small inflatable boats or end-of-life cargo ships or fishery boats – or into trucks or containers or other unsafe road

⁶ UNODC, “How COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling and cross-border trafficking in persons to Europe and North America”, Research Brief (May 2020). See also, inter alia, Gabriella Sanchez and Luigi Achilli, “*Stranded: The Impacts of COVID-19 on Irregular Migration and Migrant Smuggling*”, Policy Brief, No. 2020/20 (Florence, Italy, Migration Policy Centre, 2020); Mixed Migration Centre, “COVID-19 global update #3: impact of COVID-19 on refugees and migrants”, 27 May 2020.

⁷ General Assembly resolution 73/195, annex.

⁸ United Nations publication, Sales No. E.18.IV.9, p. 22.

⁹ Ibid., p. 54.

vehicles. According to official data of the International Organization for Migration,¹⁰ high numbers of migrants drown at sea, suffocate in containers or perish in deserts every year. As discussed in more detail below, smuggling routes (by land, sea and air) are swiftly altered to adapt to the changing conditions along the way or at the destination, including in reaction to more stringent law enforcement responses.

2. Impact of COVID-19 pandemic on smuggling of migrants' routes

15. During the COVID-19 pandemic, in an effort to control the spread of the virus, the majority of countries worldwide have resorted to the closure of land, sea and air borders as well as other measures of restricted internal mobility, such as confinement and enforced lockdowns.¹¹ The closure of main entry points into countries has been oftentimes matched with increased and enhanced patrolling at official entry points to prevent irregular crossing.

16. These measures have brought tangible impacts for citizens, as well as for those who are seeking to legally transit or enter other countries, temporarily or permanently, or to return to their countries of origin or residence. Migrants and refugees leaving countries of origin or stranded in transit points experience increasing difficulties to reach their destination, potentially resorting to a larger extent to using the services of smugglers in order to cross borders, in cases where smugglers can still provide these services. As recent UNODC research notes,¹² the effects of these measures on the smuggling of migrants and its routes are also likely to vary from country to country and from region to region.

17. COVID-19-related restrictions seem to have a different impact on the smuggling of migrants who are fleeing conflict and persecution as compared with migratory movements influenced by other factors. Migrant smuggling across the Mediterranean Sea to Europe, for instance, is strongly influenced by conflicts and unrest in Africa, the Middle East and South Asia, and, in connection with that, the central route from Libya to Italy has in fact recently experienced an increased number of smuggled migrants due to the continuous unrest in the area.¹³

18. Tightened border controls and overall tougher migration policies cause unplanned or unexpected delays for refugees and migrants in their journey, often leaving them stranded without resources. Smuggled refugees and migrants may then be forced to bear the costs of the prolonged “services” provided by criminal actors, while those traveling independently would have to find ways to secure additional resources while in transit and/or contract the services of smugglers for the first time.

19. Migrant smuggling is a criminal enterprise characterized by a demand/supply dynamic, just like any activity subject to the rules of a market. COVID-19-related restrictions worldwide are furthering the precarity that migrants traveling irregularly experience and will unquestionably influence the facilitation of irregular migration. Movement restrictions and border closures may lead criminal networks to smuggle migrants along riskier routes and in harsher conditions, which in turn would most likely lead to increasing prices for smuggling services, eventually exposing migrants and refugees to the potential of violence, abuse and exploitation, including human trafficking.

20. On those routes where smugglers will be unable to operate and provide their usual services because of the COVID-19 crisis, migrants, asylum seekers and refugees traveling by themselves, without that level of protection often afforded by smugglers, corrupt actors and other criminals facilitating smuggling, will be more susceptible to specific forms of violence, scams, robberies and abuse by criminals, militia groups, other migrants, private citizens or corrupt law enforcement actors. Others may also

¹⁰ Available at <https://missingmigrants.iom.int>.

¹¹ Available at <https://migration.iom.int/>.

¹² UNODC, “How COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling and cross-border trafficking in persons to Europe and North America”.

¹³ Ibid.

become involved in crime in order to survive.¹⁴ Refugees and migrants are vulnerable to becoming entangled in criminal networks in order to pay smuggling fees, especially in cases where those fees increase as a consequence of sudden events.

21. In the short term, tightened border controls, internal movement restrictions and the impending COVID-19-related economic crisis are all likely to contribute to changes in mixed migration movements, including migrant smuggling. The medium- and long-term effects of such an unprecedented global health, economic and mobility crisis, causing, among other things, losses of jobs and an increased strain on social security and health systems, will lead to an increased interest in migration – regular migration if possible, and, if necessary, smuggler-facilitated irregular migration, especially if socioeconomic recovery does not tend to be uniform across neighbouring regions.¹⁵ In addition, the pandemic and its effects in the various national contexts are likely to increase migration flows returning to countries of origin.

22. Further, some researchers are suggesting that the current tightened border controls and harsher migration policies worldwide will result in migrant smuggling networks increasingly de-structuring, devolving into “pay-as-you-go” single services. In such situations, single tasks in the context of an irregular journey – such as transportation, food, accommodation, guiding people by foot for a section of the trajectory – will be contracted and paid for separately.¹⁶ This would increase the journey’s precarious nature and challenge the capacity of migrants and refugees to cover the costs of their journey. Smugglers will act in accordance with their own limited expertise and resources, oftentimes being themselves migrants, refugees or asylum seekers who became stranded or unable to complete their full journey on their own and need a source of income.

23. In contrast, other reports point out¹⁷ that harsher migration policies and tightened border controls will lead to the necessity of more professionalized smuggling services, with organized criminal groups set to play a greater role in providing a “full package” of services from origin to destination. Ultimately, those two contrasting tendencies in the structure of migrant smuggling activities as suggested by researchers can coexist within the overall diverse smuggling market, which even at present provides greatly different levels of service at different levels of cost.

24. As a result of COVID-19-related measures, while overland movement has been rendered increasingly problematic, with the related patterns of smuggling of migrants by land routes rapidly evolving to respond to that, smuggling by air has almost disappeared. Indeed, the decision to cancel a large proportion of commercial flights worldwide has impeded travel also to countries whose airspace remains nominally open. This factor will particularly affect long-distance smuggling routes.

25. For migrants attempting the Mediterranean crossing to Europe, the increased dangers of journeys stem not only from increasingly high-risk smuggling modalities but also from the decreasing capacity and capability of support and safety operations due to COVID-19. Official rescue operations have been complicated by the practicalities of mitigating COVID-19 risks, and vessels bearing refugees and migrants have been quarantined and the docking of rescue ships refused.

26. Since the onset of the COVID-19 pandemic, and compared to the same period in 2019, no significant changes have been observed in the smuggling of migrants along the Western Mediterranean route from Morocco to Spain. However, a sharp

¹⁴ Sanchez and Achilli, *Stranded: The Impacts of COVID-19 on Irregular Migration*.

¹⁵ UNODC, “How COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling and cross-border trafficking in persons to Europe and North America”.

¹⁶ Gabriella Sanchez and Luigi Achilli, “The ‘real’ transformation of migrant smuggling in the time of COVID-19”, *Public Anthropologist*, 19 April 2020.

¹⁷ Lucia Bird, “Smuggling in the time of COVID-19: the impact of the pandemic on human-smuggling dynamics and migrant-protection risks”, *Policy Brief* (Geneva, Global Initiative against Transnational Organized Crime, 2020).

decrease is visible in the use of the Eastern Mediterranean route from Turkey to Greece, although that latter decrease is likely connected to the ongoing migration management negotiations between Turkey and the European Union.¹⁸

27. On the other hand, since the beginning of this year, a significant increase has been detected on the Central Mediterranean route from Libya to Italy, in connection with the deteriorating security conditions due to the conflict situation in Libya. This seems to indicate that COVID-19-related travel and movement restrictions are not halting the journeys of those fleeing conflict, violence and dangerous and inhumane conditions, who generally have no option but to use migrant smugglers.¹⁹

28. Questions remain with regard to the possible diversification of business that migrant smuggling networks will pursue as a consequence of the strengthened border measures. Researchers are in disagreement on this matter. Some believe that obstacles that render migrant smuggling more complicated (at least in the short run) will lead smuggling networks to explore other criminal ventures; other researchers believe that, for example, in the United States, women who made income housing migrants in their home would return to low-paying jobs in the service industry during times of low demand rather than venture into markets such as drug trafficking, which bear greater associated stigma and a higher risk of detection.²⁰

29. While migrant smuggling routes, methods and tactics might change or adapt as a result of sudden events such as natural disasters, conflicts and crises of various natures, smuggling hubs tend to remain stable.²¹ Hubs are the centres of convergence along migration routes where demand and the supply of smuggling services meet. Experience has shown that many hubs are small towns – or even larger cities – in which the smuggling of migrants plays a key role as one of the main economic sectors and financially sustains a significant proportion of the population. Again, the large economic and financial role of this form of crime in some territories hampers the efforts of public authorities to combat it. Enjoying support from local clans and societies living off its activities, the smuggling of migrants indeed represents in many contexts the sole source of income for a large portion of the local population.²²

30. Crises such as the current COVID-19 pandemic can also have an impact on the return of migrants. For example, hundreds of thousands of migrants and refugees have been returning to Afghanistan from Iran (Islamic Republic of), Pakistan and Turkey since February 2020.²³ Other cases involve people returning to the Bolivarian Republic of Venezuela from neighbouring countries after finding themselves unemployed and homeless due to the COVID-19 pandemic.²⁴

31. Worldwide, the economic impact of the pandemic has ushered in severe losses of jobs,²⁵ including for foreign workers, some of whom are left with no other option than to return to their countries of origin. Migrants returning to their countries of origin increasingly report challenges of various kinds, including difficulty in crossing borders, movement within the country and increased risk of detention and deportation throughout the return journey; moreover, countries of origin with overstretched

¹⁸ UNODC, “How COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling and cross-border trafficking in persons to Europe and North America”.

¹⁹ Ibid.

²⁰ Bird, “Smuggling in the time of COVID-19”.

²¹ *Global Study on the Smuggling of Migrants 2018*, p. 7.

²² See, for example, for Agadez in the Niger, Anette Hoffmann, Jo Meester and Hamidou Manou Nabara, *Migration and Markets in Agadez: Economic Alternatives to the Migration Industry*, CRU Report (The Hague, Clingendael Institute, 2017); Samuel Hall, *Selling Sand in the Desert: The Economic Impact of Migration in Agadez* (2016).

²³ Mixed Migration Centre, “Understanding the impact of COVID-19 on Afghan returnees”, 15 May 2020.

²⁴ R4V, Coordination Platform for Refugees and Migrants from Venezuela. Available at <https://r4v.info/en/situations/platform>.

²⁵ International Labour Organization, “ILO Monitor: COVID-19 and the world of work – updated estimates and analysis”, 4th ed., 27 May 2020.

health-care systems due to the current emergency are not always able to provide health care to those people upon return.

3. Impact of disasters and crises on criminal activities

32. Natural disasters pose a threat to public safety and national security primarily because they destroy infrastructure and can produce numerous fatalities. As experience has shown, the political, economic and social responses to natural disasters have the potential to increase the vulnerability of social and economic structures to criminal groups.²⁶ They can be defined in criminological terms as criminogenic, as they create the conditions for crime to thrive by exploiting the increased vulnerabilities of potential victims of crime.²⁷

33. In societies with high levels of corruption, the presence of organized criminal groups can exacerbate vulnerabilities to natural disasters, through two main channels in particular: by intercepting funds allocated for reconstruction, and through infiltration of the systems of relief aid or humanitarian support. In particular, public tenders for reconstruction have reportedly been a major interest of mafia-like businesses, globally, on past occasions.²⁸

34. As businesses close and entrepreneurs experience increased challenges in accessing credit from banks, criminal groups offer a parallel credit market. Furthermore, with Governments injecting money to revive economies, the appetite of organized criminal groups to divert those flows to their businesses increases, as does their use of money-laundering.²⁹ Tourism, entertainment and catering are but a few of the economic segments at higher risk. Widespread crises provide the perfect opportunity for organized criminal groups to gain a foothold in the legal economy and are an indispensable vehicle to multiply their capacity to influence the market, magnify their profits and launder the wealth accumulated through illicit activities.

35. In cases such as the COVID-19 pandemic, additional challenges relate to the potential for heavier infiltration of organized criminal groups into the health-care sector. Health care is traditionally a highly remunerative business sector for organized crime, and authorities have obtained reports of increased criminal attention to the pharmaceutical industry, as well as the concentration of power related to public health.

36. As experience with other crises has shown, when disasters strike communities, people largely pull together.³⁰ Devastating calamities such as hurricanes, earthquakes and large fires typically trigger communities' mutual support, cooperation to preserve what remains and the motivation to quickly recover some sense of normalcy. In all cases, however, exceptions of people turning to antisocial activities, including crime, can be noted from both anecdotes and the systematic evidence. Sexual assaults and acts of gender-based and domestic violence, as well as fraud, are but a few of the most reported cases.

37. In the immediate aftermath of large-scale disasters, measuring the extent and impact of such crimes remains a challenge. When devastation disrupts law enforcement activities and the criminal justice system in general, impunity poses a major threat, plaguing communities long after the disaster has ended. There may be a limited availability of law enforcement agents to make and follow up on reports of criminal activities, and especially in the case of people being evacuated to a different

²⁶ Anna Sergi, "Building sites: criminal groups exploit natural disasters", *IHS Jane's Intelligence Review* (2017).

²⁷ International Organization for Migration, *Addressing Human Trafficking and Exploitation in Times of Crises: Evidence and Recommendations for further Action to Protect Vulnerable and Mobile Populations* (Geneva, 2015).

²⁸ Sergi, "Building sites".

²⁹ *Ibid.*

³⁰ Scholars Strategy Network, "Understanding crime in communities after disaster: a research brief", 25 February 2016.

location, the criminal justice system may be unable to make reports of criminal activities that occurred in the disaster-stricken area.

38. Cases of gender-based violence, exploitation or other forms of sexual violence are oftentimes reported particularly as women coping with disasters may be forced into vulnerable situations, including in cases when they need to provide food and other necessities for their families or look for shelter or transportation out of a stricken area. In addition, increasing cases of domestic violence exacerbated by hardship conditions are registered during or in the immediate aftermath of a disaster.³¹

4. Impact of the COVID-19 pandemic on trafficking in persons

39. Although they are different crimes, trafficking in persons and the smuggling of migrants can be perpetrated by the same networks and occur along the same routes, and smuggled migrants can be particularly vulnerable to becoming victims of trafficking.

40. Typically, migrants employing the services of smugglers who are forced to earn along their journeys are highly vulnerable to exploitation, including at the hands of trafficking networks. Research shows that “travel now, pay later” schemes, where migrants work along the journey’s route to finance further travel, make migrants extremely vulnerable to labour or sexual exploitation.³²

41. Also, the increased levels of domestic violence reported in many countries during the COVID-19 pandemic are a worrying sign and may further suggest that trafficking victims in particular situations are also being subjected to increased violence, namely, those in situations of domestic servitude or sex slavery, which are forms of exploitation that disproportionately affect women and girls.

42. Restriction or control of movement of victims is a common control method in trafficking in persons. Lockdowns and confinement potentially reinforce the isolation of victims and drastically reduce any chance of them being identified and removed from such exploitative situations. During the pandemic, additional obstacles to accessing services, assistance and support were related to the enforced confinement measures and the related closure of non-governmental organization operations and government offices. Isolation and social distancing can further exacerbate mental health conditions and disrupt any access to informal support networks.

43. As UNODC has recently noted,³³ the COVID-19 pandemic has further exacerbated and brought to the forefront the systemic and deeply entrenched economic and societal inequalities that are among the root causes of trafficking in persons.

44. Identification of trafficking victims is a difficult endeavour under normal circumstances, mostly due to the fact that trafficking victims are often exploited in illegal, informal or unregulated sectors (e.g., petty crime, sex industry, domestic settings, drug cultivation and trafficking, agriculture and construction) in which organized criminal groups can hide their operations – in addition to the unwillingness, or inability, of victims to report their victimization, and the limited law enforcement capacities to detect this crime.

45. In the circumstances of the current COVID-19 pandemic, efforts to identify trafficking victims and subsequently refer them to social protection schemes are even more challenging. In addition, victims of trafficking are often not able to take all necessary measures to prevent the virus from spreading and have less access to health

³¹ United Nations Peacekeeping, Technical Committee on Gender Equality, “Domestic violence and COVID-19”, 6 May 2020.

³² Bird, “Smuggling in the time of COVID-19”; Claire Healy, *The Strength to Carry On: Resilience and Vulnerability to Trafficking and Other Abuses among People Travelling along Migration Routes to Europe*, Briefing Paper (Vienna, International Centre for Migration Policy Development, 2019).

³³ UNODC, “The impact of the COVID-19 pandemic on trafficking in persons: preliminary findings and messaging based on rapid stocktaking” (April 2020).

care, especially if they are undocumented migrants. Essential and practical operations to support trafficking victims have become a challenge due to countries adjusting their priorities during the pandemic.

5. Specific concerns relating to conflict and forced migration

46. A distinction is often made between those people migrating in search of better socioeconomic conditions and those escaping from conflict, persecution or otherwise migrating to seek safety. While the distinction appears clear in theory, the practice in many countries shows us that drawing a line between these two macrocategories might not always be an easy endeavour.

47. According to the Convention relating to the Status of Refugees and its 1967 Protocol, those escaping a situation of persecution are entitled to protection in the country in which they find themselves, and, according to established customary law, should not be returned to a country where they would be in danger (the principle of non-refoulement).

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

49. An asylum seeker is a person seeking to be granted refugee status in a country and awaiting a decision on his or her application for refugee status under relevant international and national instruments. In the case of a final negative decision, and unless permission to stay is provided on humanitarian or related grounds, he or she must leave the country.

50. Refugees and asylum seekers sometimes use the services of smugglers of migrants. Where they have used the services of a migrant smuggler, this shall in no way jeopardize their right to seek asylum, as is made clear in article 19, paragraph 1, of the Smuggling of Migrants Protocol, which states the following: “Nothing in this Protocol shall affect the other rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein”.

51. Especially in times of international concern due to the outbreak of global crises, such as the COVID-19 pandemic, major international actors are calling for enhanced protection for the most vulnerable, such as victims of trafficking, migrants and refugees and are advocating for wider access to health care for all people regardless of their immigration status.³⁴

52. As past experience has shown, conflict is a key trigger of forced migration, which, in the absence of safe and regular migrant pathways for refugees and asylum seekers, fosters demand for smuggling services. Persisting conflicts in a number of African countries, as well as conflict, political instabilities and clashes in the Middle East and Western Asia, combined with a lack of options for regular travel, all contribute to the use of smuggling routes in the Mediterranean. In Central America, the violence caused by internal turmoil in several countries is having substantial impact on the number of people fleeing their country.

³⁴ Office of the United Nations High Commissioner for Refugees, “The rights and health of refugees, migrants and stateless must be protected in COVID-19 response”, Joint press release, Office of the United Nations High Commissioner for Human Rights, International Organization for Migration, Office of the United Nations High Commissioner for Refugees and World Health Organizations, 31 March 2020.

IV. Law enforcement cooperation

53. The rapid global spread of the COVID-19 pandemic during 2020 has significantly affected the pre-existing levels of international cooperation on criminal justice matters, with, even in the better outcomes, a deprioritization and shift in the focus and use of related resources in very many countries. A key issue that the Working Group might wish to consider is a review of existing commitments and previously recommended action regarding law enforcement cooperation to prevent and combat the smuggling of migrants.

1. Smuggling of Migrants Protocol

54. Law enforcement cooperation is one of the key elements of States parties' efforts to prevent and combat the smuggling of migrants. Law enforcement cooperation is expressly acknowledged in the Smuggling of Migrants Protocol as an indispensable strategy in addressing this form of crime, which is transnational by nature. Chapter III (articles 10 to 18) of the Protocol provides detailed indications on ways and purposes of cooperation between States parties, at all levels.

55. In particular, article 10 deals with the sharing of information on smuggling patterns and trends, as well as *modi operandi*, between neighbouring countries along migration routes. It also concerns legislative tools and practices and the scientific and technological know-how used to boost the mutual prevention, detection and investigation of cases of migrant smuggling. As discussed above, migrant smuggling is characterized by push factors such as conflicts and disasters of various kinds, in combination with enhanced border controls and a lack of regular migration pathways. It is thus essential that countries cooperate, especially along the most utilized migration routes, to prevent, detect and halt migrant smuggling operations at their earliest stages. Especially in times of crisis, channels of communication and cooperation schemes might suffer disruptions and delays.

56. Article 11 of the Protocol contains measures for States parties to strengthen their border controls to prevent and detect the smuggling of migrants. In cases of crises, such as the current COVID-19 pandemic, many countries have resorted to full border closures in an attempt to contain the spread of virus. Enhanced border controls have had the immediate effect of reducing migration flows in the short term, even though, as UNODC notes,³⁵ those controls have the potential to increase the medium- and long-term incidence of migrant smuggling.

57. As the legislative guide for the implementation of the Smuggling of Migrants Protocol³⁶ indicates, the requirement to strengthen basic border controls does not necessarily involve cooperation with other States, and such cooperation or coordination of border controls as may be needed will not generally require legislation. The strengthening of cooperation between agencies and establishment of direct channels of communication may require some legislation to ensure that the agencies concerned have the authority to cooperate and to allow the sharing of information that may otherwise be protected by confidentiality laws.

58. Article 14 of the Protocol provides scope for international cooperation in the field of training and capacity-building and underlines the importance of sharing best practices and lessons learned in order to reinforce the capacity of local authorities to prevent, detect and prosecute the smuggling of migrants. Especially in times of crisis, information-sharing and mutual capacity-building among countries are at the core of strengthened efforts to tailor responses to the changing circumstances, including as organized criminal groups adapt their strategies. It is also important to note the role

³⁵ UNODC, "How COVID-19 restrictions and the economic consequences are likely to impact migrant smuggling and cross-border trafficking in persons to Europe and North America".

³⁶ *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.05.V.2).

of international and civil society organizations as essential partners in these endeavours.

59. Article 15 acknowledges the relevance of cooperation in the field of public information (in line with article 31 of the United Nations Convention against Transnational Organized Crime) to prevent migrants from using the services of smugglers, and from becoming victims of criminal abuses in the context of migrant smuggling. Article 31 of the Organized Crime Convention is particularly relevant in addressing these concerns as it sets out measures targeting the issue of reducing “existing or future opportunities for organized criminal groups to participate in lawful markets with proceeds of crime”, which, as outlined above, is a crucial trait of organized criminal groups of all kinds. The Organized Crime Convention specifically calls, in that regard, for strengthening “cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry.”

2. Enhanced cooperation in time of crises

60. A comprehensive response to organized crime involves a 360-degree approach that necessarily involves various sectors of the public apparatus. From national police investigation to international formal intelligence-sharing, and from the freezing and seizure of economic assets to the recuperation of goods, cooperation is key and particularly important when facing destabilizing situations and crises that often cross national borders.

61. Especially when natural disasters or other crises strike, supporting the development of national and regional strategies against migrant smuggling, anti-corruption policies that address the smuggling of migrants and the setting-up of integrated border management systems are all indispensable steps.

62. As migrant smuggling routes and strategies will adapt to changing circumstances, continuous risk analysis, joint border control and border patrolling are all key practical ways to secure the early detection and countering of criminal activities. These efforts should be matched with the transfer of skills and resources along smuggling routes, to ensure coordinated responses at the earliest possible stage.

63. Gathering and sharing information on the *modi operandi*, routes and economic models of smuggling networks, on links with trafficking in persons and other crimes, and on financial transfers, is, in a time of crisis, even more crucial for targeting migrant smuggling effectively. This can be achieved through the use of joint investigation teams and the provision of mutual legal assistance.

64. At present, knowledge and information about how migrant smuggling is adapting to the currently changing circumstances is largely anecdotal, due in large part to the overall fluidity of the situation. As experience shows, however, the *modus operandi* used by smugglers largely depends on the particularities of the region, border control measures and the financial possibilities of the migrant being smuggled. Obtaining and sharing updated region-specific information is key in tailoring effective responses to counter the smuggling of migrants, as well as all other connected criminal activities, from exploitation to violence.

65. Close law enforcement cooperation among countries along the smuggling routes is a key factor in targeting and dismantling migrant smuggling networks through effective detection, investigation and prosecution. Such efforts should be pursued in combination with persistent efforts to address the root causes of smuggler-facilitated irregular migration, develop effective strategies to revitalize and boost socioeconomic progress in countries of origin and ensure that there are diverse regular migration pathways available to refugees and migrants.

66. As with any other form of organized crime, proactive financial investigations to seize and recover criminal assets and taking action against money-laundering, are crucial for weakening the criminal networks involved in migrant smuggling. As the Italian judge Giovanni Falcone, who was killed by the mafia, often said, “follow the

money” must be the key mantra in pursuing the actions of law enforcement and criminal justice.

67. Monitoring and mitigating the effect of crises, and most notably, of the current COVID-19 pandemic, on refugees and migrants, will prove key in preventing the increase in smuggler-facilitated movement in the coming months – possibly years – and the development of a more lucrative and professionalized smuggling market that is increasingly controlled by organized criminal groups.

V. Previous Working Group recommendations on related topics

68. The Working Group on the Smuggling of Migrants has, to date, formulated more than 170 recommendations advising States parties on the implementation of the Smuggling of Migrants Protocol.

69. The Working Group has not discussed or adopted recommendations on the effects of natural disasters, conflict or other crises on the smuggling of migrants prior to the current session.

70. In examining practical action to improve prevention and cooperation efforts, the Working Group’s past recommendations have repeatedly emphasized (a) the importance of both formal and informal mechanisms for international cooperation; (b) the development and delivery of specialized training; and (c) the establishment of national structures to coordinate investigations, service delivery and information-sharing and to address the root causes of the smuggling of migrants. In the document containing the index of recommendations adopted by the Working Group on the Smuggling of Migrants at its first five meetings (CTOC/COP/WG.7/2019/4), relevant guidance can be found under the following topics: border control and management; the criminal justice system and investigations; information-sharing and intelligence-sharing; and international cooperation.

VI. Key tools and recommended resources

71. The selected tools and resources listed below are available on the UNODC website. A comprehensive overview of all tools and resources with regard to migrant smuggling is available at www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menu.

Global Study on Smuggling of Migrants 2018

72. The *Global Study on Smuggling of Migrants 2018* – the first such study from 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, profiles of smugglers and those smuggled.

Toolkit to Combat Smuggling of Migrants

73. The UNODC *Toolkit to Combat Smuggling of Migrants* provides guidance, showcases promising practices and recommends resources in various thematic areas to assist countries in implementing the Smuggling of Migrants Protocol. Among the tools comprising the toolkit, tool 1 provides an overview of the crime of smuggling of migrants, tool 5 sets out the legislative framework for criminalizing the smuggling of migrants and tool 7 covers law enforcement and prosecution.

United Nations Office on Drugs and Crime COVID-19 updates

74. The UNODC website provides a section dedicated to collecting and sharing information, policies and responses related to the current COVID-19 pandemic and

its effects on UNODC areas of work. The resources provided are available at www.unodc.org/unodc/en/covid-19.html.

Model Law against the Smuggling of Migrants

75. The aim of the UNODC *Model Law against the Smuggling of Migrants* is to assist States in implementing the Smuggling of Migrants Protocol by facilitating the review and amendment of existing legislation and adoption of new legislation using model provisions. Its chapters cover the criminalization of the smuggling of migrants, protection and assistance measures in respect of smuggled migrants, coordination and cooperation between agencies, cooperation in respect of the smuggling of migrants at sea, and processes related to the return of smuggled migrants.

Smuggling of Migrants Knowledge Portal and case law database

76. In October 2016, UNODC launched, as a component of the Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal, the Smuggling of Migrants Knowledge Portal. The portal includes a case law database, a database of legislation and an annotated bibliography providing information on key articles and publications on the smuggling of migrants. The case law database is aimed at enabling judges, prosecutors, policymakers, the media, researchers and other interested parties to broaden their knowledge of how various States use their laws to combat the smuggling of migrants, with the ultimate goal of enhancing the global criminal justice response. The database is an essential tool for increasing the visibility of successful prosecutions, identifying global patterns and promoting awareness of the realities of that crime. The database currently contains more than 800 cases involving the smuggling of migrants from 43 jurisdictions. The knowledge portal can be accessed online at <https://sherloc.unodc.org/cld/en/v3/som/>.

Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto

77. The purpose of the *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* is to assist States in implementing the Convention and its Protocols. It can be found under the heading “Legislative guide” on the SHERLOC knowledge management portal.

International Framework for Action to Implement the Smuggling of Migrants Protocol

78. The publication *International Framework for Action to Implement the Smuggling of Migrants Protocol* is a technical assistance tool to help States parties and non-State actors to identify and address gaps in their response to the smuggling of migrants in accordance with international standards. It draws on international instruments, political commitments, guidelines and best practices to propose a comprehensive approach to preventing and combating the smuggling of migrants. Part two of the *International Framework for Action* contains an overview, in the form of four tables, of the following topics: prosecution and investigation; protection and assistance; prevention; and cooperation and coordination.
