

REFLECTING ON THE NECESSITY OF INTERNATIONAL COOPERATION AND SUPPORTING NEW MODELS OF COOPERATION TO COUNTER MIGRANT SMUGGLING

Report of the side event held at the fifth informal thematic session
of the global compact for safe, orderly and regular migration
on 4 September 2017 in Vienna



The opinions expressed in the report are those of the authors and do not necessarily reflect the views of the International Organization for Migration (IOM), the United Nations Office on Drugs of Crime (UNODC) or the Republic of Turkey. The designations employed and the presentation of material throughout the report do not imply the expression of any opinion whatsoever on the part of IOM, UNODC or the Republic of Turkey concerning the legal status of any country, territory, city or area, or of its authorities, or concerning its frontiers or boundaries.

IOM is committed to the principle that humane and orderly migration benefits migrants and society. As an intergovernmental organization, IOM acts with its partners in the international community to: assist in meeting the operational challenges of migration; advance understanding of migration issues; encourage social and economic development through migration; and uphold the human dignity and well-being of migrants.

The report was prepared by Deniz Karcı Korfalı. She has a Phd in International Relations and Political Science from the Koc University in Istanbul.

Suggested citation: Karcı Korfalı, D. (ed.) (2018). *Reflecting on the Necessity of International Cooperation and Supporting New Models of Cooperation to Counter Migrant Smuggling*. IOM, Geneva.

Publisher: International Organization for Migration
17 route des Morillons
P.O. Box 17
1211 Geneva 19
Switzerland
Tel: +41 22 717 9111
Fax: +41 22 798 6150
E-mail: hq@iom.int
Website: www.iom.int

© 2018 International Organization for Migration (IOM)

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior written permission of the publisher.

Report of the side event held at the fifth informal thematic session of the global compact for safe, orderly and regular migration on 4 September 2017 in Vienna

Smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims

REFLECTING ON THE NECESSITY OF INTERNATIONAL COOPERATION AND SUPPORTING NEW MODELS OF COOPERATION TO COUNTER MIGRANT SMUGGLING



CONTEXT

The large-scale smuggling of migrants across international borders poses a global challenge to the management of migration, as well as the well-being of migrants. Even though migrant smuggling is a crime under international law and the domestic law of most States, many migrants resort to smugglers when they do not have the option to travel through regular channels. Migrant smugglers exploit the vulnerability of migrants, resulting in significant profits for criminal networks.

Migrant smuggling is a deadly crime. All too often, migrants pay with their lives: they suffocate in containers, perish in deserts or drown at sea. In 2016 alone, 7,495 migrant deaths were recorded worldwide, many of them at the hands of smugglers. By August 2017, 3,420 deaths were recorded.¹ Once paid, smugglers often have little or no interest in the migrants' well-being, leaving them particularly vulnerable to abuse and exploitation.

Migrant smuggling has put immense pressure on States' efforts to manage migration, leading to more restrictive border controls in many parts of the world. States have the sovereignty to control their borders and enhance security, as well as a responsibility to combat transnational organized crime and protect human rights. States' efforts to effectively counter migrant smuggling are often diluted by a lack of intra-agency and inter-agency cooperation, coupled with a shortage of bilateral and/or multilateral cooperation resulting in inadequate (or non-existent) information exchange, prevention, joint investigations and prosecutions. As migrant smugglers are often highly organized through flexible transnational networks, States should increasingly work together to better address migrant smuggling challenges.

The September 2016 New York Declaration for Refugees and Migrants welcomes “reinforced technical cooperation, on a regional and bilateral basis, between countries of origin, transit and destination on the prevention of human trafficking and migrant smuggling and the prosecution of traffickers and smugglers”.² The Declaration recognizes that the UN Member States should, “with full respect for our obligations under international law, vigorously combat [...] migrant smuggling with a view to [its] elimination”.³ The global compact for safe, orderly and regular migration will set out a range of principles, commitments and understandings on international migration. Member States should actively contribute to the preparatory process by providing concrete recommendations and other substantive inputs for the global compact for migration.

Given this international context, this side event was organized to discuss innovative approaches and new models of international cooperation to counter migrant smuggling. Co-hosted by the International Organization for Migration (IOM) and the United Nations Office on Drugs and Crime (UNODC) and organized by the Republic of Turkey, it took place in the context of the fifth informal thematic session of the preparatory process leading to the adoption of the global compact for safe, orderly and regular migration. The event was well attended, and the audience ranged from representatives of governments, international organizations to civil society and academia. The side event provided an opportunity to reflect on the outcome of the Istanbul Regional Conference on Counter Migrant Smuggling: Innovative Ideas and Supporting New Models of Cooperation – hosted by Turkey on 5 and 6 July 2017 – which brought together representatives from 17 governments, international organizations and academia to discuss best practices and draft concrete plans to effectively and realistically tackle migrant smuggling.

¹ International Organization for Migration (IOM), Missing Migrants Project (n.d.). Available from <http://missingmigrants.iom.int/>

² United Nations General Assembly, New York Declaration for Refugees and Migrants (United Nations, New York, 2016), para. 36.

³ Ibid., para. 35.

OPENING STATEMENT

The event was opened by Ambassador Mehmet Samsar, Director General for Consular Affairs at the Ministry of Foreign Affairs of the Republic of Turkey.

Ambassador Samsar primarily focused on the collective duty of strengthening international cooperation to address the drivers of irregular migration and combat migrant smuggling. The Ambassador noted that migrants should be viewed not as numbers, but as human beings with rights. This view not only brings along the necessity to counter racism, xenophobia and discrimination, but also requires every effort to open regular and legal channels of migration that safeguard migrants' dignity and well-being. Given the existing international legal framework and the various regional and international platforms to facilitate cooperation, the conditions conducive to safe, regular and orderly migration are present. Moreover, "security measures" without overly addressing the root causes of irregular migration would only yield temporary and limited success.

While strongly disagreeing with the discourse associating migration with terrorism, Ambassador Samsar emphasized the need to openly talk about the dangers that migrants face in order to protect their rights. He further pointed that migrant smuggling and human trafficking should be handled as organized crimes related to terrorism. The relation between smuggling and terrorist organizations has been acknowledged by a number of international documents and reports, including UN resolutions. He also emphasized that terrorism should not be used as an excuse to prevent human mobility.

Besides eliminating the push factors, every effort for opening more regular and legal channels of migration should also be exerted. The Ambassador also shed light on domestic developments with regards to migrant protection. Specifically, the Law on Foreigners and International Protection was enacted in 2013, following a transparent and participatory process together with national and international stakeholders. The law ensures the legal basis for the principle of non-refoulement and defines the humanitarian residence permit, subsidiary protection mechanism and temporary protection. To prevent the loss of lives in the Aegean Sea, disrupt migrant smuggling networks and replace irregular migration with legal migration, Turkey closely cooperated with the European Union. This partnership culminated in an agreement concluded on 18 March 2016, which led to an overall decrease in the irregular migration in the Aegean region.

SUMMARY OF PANEL PRESENTATIONS

The panel reflected on the necessity of international cooperation and supporting new models of cooperation to counter migrant smuggling. Panelists highlighted States' responsibility to criminalize migrant smuggling while ensuring that smuggled migrants are not criminalized and are provided with adequate protection and assistance, in accordance with the Protocol against the Smuggling of Migrants by Land, Sea and Air.⁴

The panelists were: (a) Jørgen Carling, Research Professor at the Peace Research Institute Oslo; (b) Marie McAuliffe, PhD, Head of the Migration Policy Research Division in the Department of International Cooperation and Partnerships of IOM; and (c) Morgane Nicot, Crime Prevention and Criminal Justice Officer at the Human Trafficking and Migrant Smuggling Section of UNODC.

The panel was moderated by Berlan Pars Alan, Senior Migration Management Policy Advisor at the Department of Migration Management of IOM, who Mr Alan introduced the aim of the panel and the three questions that would frame the interventions and discussions during the side event:

- (a) What actionable recommendations can be included in the global compact for migration to maximize the effectiveness of international cooperation in combating migrant smuggling and addressing the protection and assistance needs of smuggled migrants?
- (b) How can data and research help develop more efficient and effective evidence-based policies against migrant smuggling?
- (c) How can the role of the international community be improved to better support States in developing effective measures to counter migrant smuggling and ensure the protection and assistance to smuggled migrants?

Professor Jørgen Carling summarized the major issues that were addressed during the Istanbul Regional Conference on Counter Migrant Smuggling. In broad brushes, Professor Carling highlighted the tensions and different perspectives underlying counter-migrant smuggling efforts. He underlined the tension between States' concerns to maintain the full sovereignty and integrity of their borders, on the one hand, and concerns about the safety and well-being of smuggled migrants on the other hand. The large migration flows can conflict with citizens' preference for low levels of immigration in destination countries. In addition, the prioritization of law enforcement and criminal prosecution in the management of irregular migration further complicates the field.

In light of the issues discussed in the Istanbul Regional Conference, Professor Carling focused on the urgent necessity to align national legislations with the Protocol. He touched upon the technical aspects of law enforcement to enhance counter-migrant smuggling, including building a healthy information flow and strengthening the capacity of human resources both at the managerial and field staff levels. Professor Carling underlined the importance of knowledge and data on migrant smuggling and called for cooperation between various sectors, such as international organizations, governments and researchers. Along with a persisting geographical imbalance in research and knowledge, the division between research-based and policy-based perspectives was highlighted as a key theme during the Istanbul Regional Conference.

⁴ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, United Nations Treaty Series, vol. 2241, Doc. A/55/383, p. 507.

He concluded that the Istanbul Regional Conference proposed policy solutions to address the adverse consequences of smuggling. These include upholding the inclusive definition of migrants whereby every person on the move is a migrant and a potential refugee. They also include clarifying the distinction between human trafficking and smuggling, promoting family reunification and an emphasis on addressing all crimes perpetrated against smuggled migrants. Lastly, the border management should be improved and take into consideration cross-border collaboration.

Upon a question from the audience on the shifting nature of smuggling organizations, Professor Carling described the extreme diversity of smuggling networks. Smuggling organizations have different structures and may work both semi-autonomously and in conjunction with larger networks. Still, a gradual shift is observed from small-scale smuggling businesses towards more professional organizations.

Marie McAuliffe provided an overview of the key findings and recommendations stemming from the 2016 IOM report, *Migrant Smuggling Data and Research: A global review of the emerging evidence base*.

Ms McAuliffe emphasized that, in contrast to government officials and law enforcement agencies, researchers in the field can gain unique access to sensitive data directly from migrants in different smuggling-related situations. Most data are gathered through qualitative research and respond to the research interests of destination countries given their stronger funding and institutional capacities.

Ms McAuliffe explained that the conclusions and recommendations of the IOM report can be assessed under three broad headings: (a) strengthening research and analysis partnerships; (b) supporting capacity-building, particularly in the research and analysis communities; and (c) focusing on emerging and priority topics. Hence, building a bridge between researchers, law enforcement agencies and the intelligence community can strengthen both policymaking and capacity-building, especially in regions such as West and Central Africa and South-East Asia through transit and origin country perspectives. It is crucial that policy elements are geared towards reducing smuggled migrants' vulnerability and improving their safety while maintaining border management practices. Migrant-centric research should be prioritized to grasp a more nuanced understanding of migrants' decision-making.

Upon a question regarding the modus operandi of smuggling organizations, Ms McAuliffe revealed that transnational connectivity is a crucial enabling factor. Transnational connectivity includes the transfer of money and information not only between smugglers and migrants, but also between smugglers, migrants and diaspora networks at home, in transit or destination countries. Hence, the nature of migrant smuggling organizations is linked to the type and extent of transnational connectivity on the specific migratory route.

Morgane Nicot focused on the practical ways to make the Protocol against the Smuggling of Migrants more actionable and offered a quick overview of its increasing relevance. With the progressive ratification and accession by origin, transit and destination States, 145 Member States are currently bound by its obligations relating to the prevention of migrant smuggling, the investigation and prosecution of this crime and the protection of smuggled persons, and cooperation in these regards. As a clarification, Ms Nicot underlined that the Protocol does not target the actions of humanitarian groups or family members as they do not derive financial or material benefits from the facilitation of migration.

Ms Nicot explained that international cooperation is necessary to combat migrant smuggling. The criminal networks operating the smuggling ventures are rarely contained in one national territory and span across transnational migration routes. She noted that the UN Convention against Transnational Organized Crime, supplemented by the Protocol against the Smuggling of Migrants, provides a useful framework for international cooperation. Ms Nicot mentioned two actionable recommendations in this respect. First, central authorities should be designated to receive cooperation requests and respond to them in a timely manner. Second, the capacity of existing judicial cooperation networks should be enhanced. These actions serve as parts of a comprehensive response that would ultimately offer migrants and refugees proper alternatives to smuggling.

Finally, Ms Nicot highlighted the critical importance of addressing the financial aspects of the smuggling operations, as well as taking measures against corruption and enabling irregular border crossing and document fraud. Enforcement agencies should follow both migration and money flows through the use of special investigative techniques. In that respect, the application of the lessons learned from other contexts of transnational organized crimes is important.

SUMMARY OF KEY POINTS AND RECOMMENDATIONS

Overall, the discussions focused on the following: (a) improving data and research on migrant smuggling; (b) maximizing the effectiveness of international cooperation; and (c) strengthening the role of the international community in responding to migrant smuggling.

Data and research can help develop effective evidence-based policies to counter migrant smuggling. The persisting geographical imbalance in research and the division between research-based and policy-based perspectives demonstrate the need to build a bridge between international organizations, governments and researchers. Migrant-centric research that focuses on smuggling through a transit and origin country perspective is crucial for both policymaking and capacity-building. States, through enhanced cooperation, should develop effective measures to counter migrant smuggling and ensure the protection and assistance of smuggled migrants. By bringing national legislations in line with the provisions of the Protocol and harmonizing the definitions of migrant smuggling, States can facilitate cross-national institutional cooperation. Counter-migrant smuggling partnerships should provide a framework for capacity-building and data sharing with the twofold aim of reducing migrants' vulnerability and maintaining border management practices.

Several actionable recommendations were put forward by the panel.

First, considering the shift from small-scale smuggling businesses towards more professional organizations, a greater use should be made of the cooperation measures foreseen in the Convention against Transnational Organized Crime – the parent instrument of the Protocol against Migrant Smuggling.

Second, judicial cooperation and joint investigation are crucial and must be part of a holistic approach that offers migrants effective alternatives to smuggling for family reunification and access to protection.

Third, there is a need to strengthen the capacity of human resources both at the field and managerial levels, and effective information flow of the knowledge and data on migrant smuggling between all actors concerned – especially between law enforcement and prosecutors – as well as international organizations, governments and researchers.

Fourth, the financial aspects and the money flow in migrant smuggling operations should be taken into account during criminal investigations; applying the lessons learned in other transnational crime contexts should be therefore pertinent for counter-migrant smuggling efforts.



Side-Event

Fifth informal thematic session for the Global Compact for Safe, Orderly and Regular Migration: *Smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims*

Reflecting on the Necessity of International Cooperation and Supporting New Models of Cooperation to Counter Migrant Smuggling

Organized by **Government of the Republic of Turkey**
Co-hosted by **International Organization for Migration (IOM)** and
United Nations Office on Drugs and Crime (UNODC)

Event Date & Time: Monday, 4 September 2017 - 13:15 – 14:45

Location: Board Room A, Vienna International Centre, Austria

Context:

The large-scale smuggling of migrants across international borders is a global challenge to migration management, as well as the well-being of migrants. Even though migrant smuggling is a crime under international law as well as the domestic law¹ of most states, many migrants resort to migrant smugglers when they do not have the option to travel by regular channels. Migrant smugglers exploit the vulnerability of migrants, resulting in significant profits for criminal networks.

Migrant smuggling is a deadly crime. All too often, migrants pay with their lives: they suffocate in containers, perish in deserts or drown at sea. In 2016 alone, 7,495 migrant deaths were recorded worldwide, many of them at the hand of smugglers and by August 2017, 3,420 deaths were recorded.² Once paid, smugglers often have little or no interest in migrants' well-being, leaving them particularly vulnerable to abuse and exploitation.

Migrant smuggling has put immense pressure on States' efforts to manage migration leading to more restrictive border controls in many parts of the world. States have the sovereignty to control their borders and enhance security, as well as a responsibility to combat transnational organized crime and protect human rights. States' efforts to effectively counter migrant smuggling are often diluted by a lack of intra-agency and inter-agency cooperation, coupled with a shortage of bilateral and/or multilateral cooperation resulting in inadequate (or nonexistent) information exchange, prevention, joint investigations, and prosecutions. As migrant smugglers are often highly organized through flexible

¹ Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, United Nations, Treaty Series, vol. 2241, p. 507; Doc. A/55/383.

² International Organization for Migration (IOM). (2017). Missing Migrants Project. Retrieved from Missing Migrants: <http://missingmigrants.iom.int/>

transnational networks, States should increasingly work together to better address migrant smuggling challenges.

The September 2016 New York Declaration for Refugees and Migrants welcomes "reinforced technical cooperation, on a regional and bilateral basis, between countries of origin, transit and destination on the prevention of human trafficking and migrant smuggling and the prosecution of traffickers and smugglers."

Background:

The New York Declaration recognizes that the Member States of the United Nations should, "with full respect for our obligations under international law, vigorously combat [...] migrant smuggling with a view to [its] elimination³". The global compact for safe, orderly and regular migration will set out a range of principles, commitments and understandings among Member States on international migration. The UN calls upon Member States to actively contribute to the preparatory process by providing concrete recommendations and other substantive inputs for the global compact for migration.

In light of the New York Declaration and given the importance of protecting the lives and rights of migrants, Turkey hosted the "Istanbul Regional Conference on Counter Migrant Smuggling," on 5 and 6 July 2017. Representatives from 17 governments, international organizations and academics gathered to discuss best practices in the field and draft concrete plans to effectively – and realistically – tackle migrant smuggling. A report of this event co-authored by Research Professor Jorgen Carling of Peace Research Institute Oslo and Professor Ahmet İçduygu of Koç University will be available at the time of the side-event.

Objectives and Expected Output:

This side event will bring together representatives of governments, civil society and international organizations to discuss counter migrant smuggling within the context of the New York Declaration and the global compact for migration. The event will serve as a platform to discuss innovative approaches to countering migrant smuggling and supporting new models of cooperation. This event will further advance discussions pertaining to the necessity of international cooperation in order to effectively and efficiently counter migrant smuggling. It will also allow the participants to reflect on the outcomes of the Istanbul Regional Conference on Counter Migrant Smuggling. It will also highlight: the role of the Protocol against the Smuggling of Migrants towards State's responsibility to criminalize the smuggling of migrants; ensuring that the migrants shall not become liable to criminal prosecution having been the object of smuggling; and the protection and assistance that should be extended to those smuggled migrants in need of it.

A concise report of this side event will be submitted to the preparatory meeting to be held in Guadalajara, Mexico on 4-6 December 2017.

Contact:

Please contact Julia de Bresser (jdebresser@iom.int) and Kei Fukagawa (kfukagawa@iom.int) for any questions.

Side Note:

- The event will be conducted in English only.
- Sandwiches and refreshments will be provided before the event.

³ United Nations General Assembly. (2016). New York Declaration for Refugees and Migrants. New York: United Nations.

Agenda

I. **Opening Remarks** (7 minutes)

Ambassador Mehmet Samsar, Director General for Consular Affairs of the Ministry of Foreign Affairs of the Republic of Turkey.

II. **Panel** (30 minutes)

Key Discussion Points:

The following questions will frame/guide presentations and discussion:

1. What actionable recommendations can be included in the global compact for migration to maximize the effectiveness of international cooperation in combatting smuggling of migrants and addressing the protection and assistance needs of the smuggled migrants?
2. How can data and research help develop more efficient and effective evidence based policies against migrant smuggling?
3. How can the role of the international community be improved to better support States in developing effective measures to counter migrant smuggling and ensure the protection and assistance to smuggled migrants?

Moderator:

Berlan Pars Alan, Senior Migration Management Policy Advisor, Department of Migration Management, International Organization for Migration

Panelists:

- Research Professor *Jørgen Carling*,
Peace Research Institute Oslo (PRIO)
"A reflection on the outcomes of the Istanbul Regional Conference on Counter Migrant Smuggling"
- Ms. *Marie McAuliffe*,
Head of Migration Research Division, IOM.
"Key findings of IOM's 'Migrant Smuggling Data and Research' report and the upcoming volume"
- Ms. *Morgane Nicot*,
Crime Prevention and Criminal Justice Officer, Human Trafficking and Migrant Smuggling Section (HTMSS) UNODC.
"Practical ways to make the Protocol against the Smuggling of Migrants more actionable"

III. **Q&A Session** (30 minutes)

IV. **Closing remarks**

This side-event will be held as part of the "Comprehensive Global Approach to Counter Migrant Smuggling and Enhanced Migrant Protection" project supported by the Government of Turkey implemented by the International Organization for Migration.



 **IOM**
UN MIGRATION