

# PROMOTING INNOVATIVE IDEAS AND SUPPORTING NEW MODELS OF COOPERATION IN ADDRESSING MIGRANT SMUGGLING

Insights from the Istanbul Regional Conference  
on Counter Migrant Smuggling 2017



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Cover photo: A rubber boat carrying around 50 migrants and refugees arrives from Bodrum in Turkey to the Greek island of Kos in the early hours of the morning. © International Federation of Red Cross and Red Crescent Societies 2015/Christopher JAHN. Reproduced under a Creative Commons BY-NC-ND license.

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# PROMOTING INNOVATIVE IDEAS AND SUPPORTING NEW MODELS OF COOPERATION IN ADDRESSING MIGRANT SMUGGLING

Insights from the Istanbul Regional Conference  
on Counter Migrant Smuggling 2017

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Participants at the Istanbul Regional Conference on Counter Migrant Smuggling in Istanbul, Turkey. © IOM 2017/Berk OZBERK

# 1. BACKGROUND

The large-scale smuggling of migrants across international borders has become a global threat to migration governance and the well-being of migrants. Faced with this growing concern, the Istanbul Regional Conference on Counter Migrant Smuggling aimed to offer a platform for interactive discussions to identify best practices, improve cooperation and develop innovative approaches to counter migrant smuggling.

The overall objectives of this conference were to: (a) develop innovative ideas to disrupt, detect and prosecute migrant smugglers; and (b) explore how to support new models of cooperation. The conference focused on enhancing the capacity of States to develop and enforce policy, legislation and the operational capability to disrupt, interdict and prosecute migrant smugglers while ensuring the safety and dignity of migrants.

With the September 2016 New York Declaration for Refugees and Migrants, the Member States of the United Nations commit to “vigorously combat [...] migrant smuggling with a view to [its] elimination”, “with full respect for our obligations under international law”.<sup>1</sup>

This report is prepared as an output of the project titled “A Comprehensive Approach to Counter Migrant Smuggling and Enhance Migrant Protection”, implemented by the International Organization for Migration (IOM) and funded by the Government of Turkey.

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<sup>1</sup> United Nations, Resolution adopted by the General Assembly on 19 September 2016 (New York Declaration for Refugees and Migrants), A/RS/71/1, 3 October 2016.



## 2. SUMMARY OF PRESENTATIONS

### 2.1. Opening remarks

Ambassador Mehmet Samsar, Director General for Consular Affairs of the Ministry of Foreign Affairs of Turkey, welcomed the participants and stressed the contribution of migration to the development of historic cities, such as Istanbul, Rome, Beijing and New York. While emphasizing the importance of combating migrant smuggling and human trafficking, he pointed out that enhancing international cooperation and responsibility sharing are fundamental elements of migration governance. Given the contribution of migrants to the enrichment of societies, he underlined the importance of eliminating racism, xenophobia and discrimination. Ambassador Samsar described migrant smuggling as the darkest and saddest part of migration, and he reiterated that smugglers benefit from the vulnerabilities of helpless people. Highlighting the organized nature of this crime, he stressed the need to develop effective guidelines and policies in the field of migration and therefore mentioned the global compact for migration as a unique opportunity. He mentioned that the outcome of this regional conference would hopefully feed into the global discussion on the topic.

Dwelling on Turkey's experience in migration management, Ambassador Samsar explained that Turkey today hosts more than 3 million Syrians, providing them with housing, health care, education and food. While 10 per cent of Syrians are accommodated in 23 temporary shelters, he mentioned that the rest live throughout Turkey. He highlighted that the Government of Turkey, together with municipalities and non-governmental organizations (NGOs), have spent nearly USD 30 billion so far; however, the international assistance received reached only half a billion US dollars. Emphasizing the importance of international cooperation, he underlined that the European Union–Turkey statement of 18 March 2016 aims to save lives, crush smuggling networks and replace illegal migration with legal migration. He stressed that the loss of lives in the Aegean Sea decreased dramatically as a result of the statement. In this vein, he pointed out the importance of fulfilling the commitments in the statement regarding the voluntary admission schemes and financial assistance that will generate greater hopes for Syrians. Ambassador Samsar also underlined that the international community should refrain from identifying migration with terrorism, while not losing sight of how terrorist organizations use forced migration and human trafficking as war tactics, as described in various international and UN documents.

Gervais Appave, Special Advisor to the Director General of IOM, highlighted IOM's vision for a world in which migrants move as a matter of choice rather than necessity and through safe channels. According to IOM, the protection of migrants' rights throughout the migration cycle is only possible in an environment where human mobility is well governed. Smuggling, however, not only undermines the sovereign right of States to control their borders, but is also an obstacle to safe, dignified and orderly migration. In response to smuggling, which should be perceived as a highly organized and ruthless industry rather than an isolated individual activity, Mr Appave underlined the recent promise of global leaders to work towards principles that will enable the efficient management and governance of migration. Accordingly, the New York Declaration provides the foundation for establishing a set of guidelines and a consensus on issues relative to migrant smuggling. In this regard, he noted the necessity for the migration community to improve its evidence base on migrant smuggling and called for more cooperation between stakeholders to understand national, regional and global trends in this field.

## 2.2. Keynote presentation

Jørgen Carling, Research Professor from the Peace Research Institute Oslo (PRIO), gave a keynote presentation focused on migrant smuggling trends and policy challenges of particular relevance to the Central and Eastern Mediterranean migration routes. While the Central Mediterranean route has shown a consistent seasonal pattern of arrivals for several years, the Eastern Mediterranean route saw a relatively short-lived, but very large peak in arrivals in 2015–2016.

Professor Carling highlighted the need for different approaches to migrant smuggling depending on the different stages of the smuggling journey. Most of the attention focuses on the flows towards the Schengen Area, from where the Central and Eastern Mediterranean migration routes have received their names. However, most journeys are much more complex. In stylized smuggling journeys, there may be six types of countries involved: countries of origin, neighbouring countries, transit countries, non-European Union and European Union countries at the external borders, and preferred destination countries in the European Union. This differentiation of countries matters in counter-smuggling policy because every step in this chain can involve a different context for smuggling. Not only the organization and mode of smuggling may differ, but also how each step relates to the international legal framework for refugee protection. Moreover, many countries represent more than one type in diverse migration flows.

Strategically, one can differentiate between measures to reduce the supply of migrant smuggling and measures to reduce the demand for migrant smuggling. Each of these approaches can be further subdivided. Supply-reducing approaches can seek to remove or deter suppliers, or remove their supporting resources. Demand-reducing approaches can seek to make the use of smugglers futile and unnecessary, or change the cost-benefit balance of using smugglers. These strategies differ in terms of their feasibility and efficacy, as well as of their wider implications for migration management.

Professor Carling pointed out that countering migrant smuggling may be driven by diverse motivations. These include: (a) reducing illegal immigration; (b) preventing unfounded asylum claims; (c) averting exploitation and harm to migrants; (d) obstructing funding streams to terrorism; (e) minimizing international protection obligations; (f) showing political resolve; and (g) securing valuable resources for organizations or countries. The last three motivations are not necessarily legitimate ones. However, they are part of the complex dynamics that shape migration management and responses to migrant smuggling.

Counter-migrant smuggling measures often have multifaceted impacts, including indirect and unforeseen ones. It is therefore important to consider the full range of likely consequences and monitor them carefully. As an example, focusing counter-migrant smuggling interventions in the smuggling hub of Agadez, Niger, is strategically sensible, but carries the risk of destabilizing the volatile region by undermining the local economy. In other cases, counter-migrant smuggling measures may result in smugglers using more dangerous routes and hence, in more migrant deaths.

Professor Carling pointed out that counter-migrant smuggling initiatives are often short term. However, sustainable solutions require long-term strategic thinking. The development of a global compact for migration and a global compact for refugees provides an important opportunity for doing so.



## 2.3. Turkish experiences with counter-migrant smuggling

This session consisted of interventions by representatives of the Directorate General of Migration Management (DGMM) and law enforcement agencies of the Ministry of Interior of Turkey.

Osman Koramaz, Head of the Department of Protection for Victims of Human Trafficking in DGMM, explained the national legal framework on migrant protection and human trafficking while focusing on Turkey's efforts to address irregular migration. He provided an overview of the efforts to address irregular migration in a holistic and coordinated manner that range from strengthening the legal foundation to establishing hotlines for those in need. He explained that the Turkish Penal Code criminalizes both smuggling of migrants and trafficking in persons in line with the United Nations Convention against Transnational Organized Crime and the Protocols thereto.<sup>2</sup> Under the 2013 Law on Foreigners and International Protection, DGMM is tasked to ensure coordination among all law enforcement units and relevant agencies to develop and follow up on the implementation of measures to combat irregular migration. DGMM also serves as the secretariat of the Coordination Board on Combating Irregular Migration, which is established by the same law. He added that the Department was tasked with carrying out activities and actions related to combating human trafficking and protecting victims of trafficking under the law and the related Regulation on Combating Human Trafficking and Protection of Victims.

Mr Koramaz shed light on the recent migration developments in Turkey and provided a detailed timeline of the arrival of Syrians since 2011. He emphasized Turkey's open-door policy for Syrians regardless of their ethnic and religious identity. To highlight Turkey's positive attitude, he pointed out that the Regulation on the Work Permits of Foreigners under Temporary Protection was enacted in 2016 to facilitate the integration of Syrians in Turkey. Mr Koramaz stressed the achievements of the European Union–Turkey statement that led to a dramatic decrease in deaths and irregular crossings in the Aegean Sea. He also elucidated the irregular migration trends in Turkey and indicated that the number of intercepted irregular migrants increased from approximately 32,000 in 2010 to a peak of 170,000 in 2016. Mr Koramaz also explained that the readmission agreements signed with 15 countries are fundamental to returning irregular migrants in a dignified manner. With regards to the identification of vulnerabilities, while the legal framework is critical, its implementation strongly depends on the knowledge and capacities of field staff who interview, identify and assist victims. Finally, he emphasized Turkish authorities' interest in enhancing international cooperation with various stakeholders, NGOs and States.

Superintendent Tolga Becer, Deputy Chief of the Migrant Smuggling Division in the Department of Combating Migrant Smuggling and Human Trafficking of the Turkish National Police, provided an overview of Turkey's ongoing operational efforts to counter migrant smuggling. He informed that the Turkish National Police established the Department of Combating Migrant Smuggling and Human Trafficking in 2016. He explained the bilateral cooperation with Italian, British and German authorities to prosecute, disrupt and dismantle the organized crime groups involved in the smuggling industry and underscored that most apprehensions related to migrant smuggling were made in Turkey's western region. Finally, he noted that a crucial challenge in counter-migrant smuggling is to maintain the balance between border security and protection of migrants' rights.

Colonel Mustafa Çana, Head of the Department of Combating Migrant Smuggling and Human Trafficking in the General Command of Gendarmerie, gave a quick overview of the Gendarmerie operations to combat smuggling and trafficking in Turkey. He explained that since 2012, 33,124 migrant smuggling attempts were stopped, 352,182 irregular migrants were intercepted and 6,880 smugglers were apprehended. He said that 20 out of the 23 temporary shelters for Syrians are under

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<sup>2</sup> United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air.

the mandate of the Gendarmerie that deploys 386 staff for ensuring their security. He underlined that the amendment of the Turkish Penal Code in April 2017 allows the seizure of assets used in migrant smuggling. He also briefly informed about the awareness-raising and capacity-building activities of the Gendarmerie following a Protocol signed with the United Nations High Commissioner for Refugees (UNHCR). Within the framework of the Reinforcement of Institutional Capacity in International Protection and Mixed Migration Project (September 2016–April 2017), several activities were organized: (a) trainings for Gendarmerie personnel on refugee law, migrant smuggling and human trafficking; (b) the organization of train the trainer courses; and (c) the realization of field visits and a working visit to Italy. Colonel Çana also mentioned that the Gendarmerie established migrant smuggling and human trafficking units in 19 cities and 18 districts where the levels of irregular migration were high.

Commander Murat Bayram, from the Department of General Planning and Policies in the Turkish Coast Guard, focused on the context for irregular migration in Turkey and the smuggling of migrants by sea. He identified the conflict in the Syrian Arab Republic as the most critical root cause of irregular migration. Analysing the irregular migration statistics, the Commander indicated that between 2011 and 2014, the total number of irregular migrants reached approximately 26,000. In 2015, the numbers exceeded 90,000. Unfortunately, the number of deaths in 2015 reached a peak of 279. Overall, most of the irregular migrants were from the Syrian Arab Republic, Afghanistan, Pakistan, Iraq, Eritrea and the Congo.

Commander Bayram pointed out that the Coast Guard mostly deals with exit attempts contrary to most counterpart agencies that focus on the prevention of irregular entries. This was why intensive migrant identification and rescue spots were established along Turkey's western border within short distance from the Aegean islands where irregular crossing attempts were most frequent. The intensive operations and Coast Guard initiatives in this region were supported by the Turkish Navy, Gendarmerie and National Police with occasional NATO involvement and intense cooperation and direct communication between the Turkish Coast Guard Command and the Joint Rescue Coordination Centre of the Hellenic Coast Guard. There had also been strong cooperation with Turkish State institutions, such as DGMM, the Disaster and Emergency Management Authority under the Prime Ministry and the Turkish Red Crescent Society and international organizations, such as the UNHCR, IOM and Frontex.

## 2.4. Panel I: Legal frameworks and capacity-building

Panel I focused on the current adherence to existing international legal frameworks and the inclusion of migrant smuggling into national criminal legislation and considered the need for a coordinated judicial and law enforcement response. The focus was on enhancing the capacity of law enforcement agencies and the criminal justice system to effectively bring migrant smugglers to justice.

### Moderator

- Mr Berlan Pars Alan, Senior Migration Management Policy Advisor, Department of Migration Management, IOM

### Panellists

- Mr Serghei Pantea, Main Prosecution Officer, Criminal Prosecution Unit for Exceptional Cases in the Department of the Border Police under the Ministry of Internal Affairs of the Republic of Moldova
- Ms Annalisa Pauciuolo, Associate Expert, Human Trafficking and Migrant Smuggling Section, Organized Crime and Illicit Trafficking Branch, Division for Treaty Affairs, United Nations Office on Drugs and Crime (UNODC)

- Ms Burçe Dündar Arı, Sector Manager on Justice and Home Affairs, the European Commission External Action Service, Ankara, Turkey

Providing insight into the Moldovan context, Serghei Pantea noted that the high unemployment rate, the absence of a proper legal framework to tackle this crime and the limited capacity for rapid reaction of law enforcement were among the underlying enablers of the smuggling industry. Mr Pantea mentioned various smuggling routes, including the illegal migration of Moldovan citizens to Israel by using false passports and the illegal entry of migrants from Afghanistan, Albania, Angola, Egypt, the Congo, Palestinian Territories and Sri Lanka to the Republic of Moldova in transit to European Union countries. Next, Mr Pantea elaborated on the diverse financial methods involved in this organized crime, such as electronic money transfer through untraceable methods, opening of accounts via third persons, usage of shares and corporate bonds and interbank money transfers, which complicate the investigation process. Moreover, the common usage of prepaid and recharged phone cards sold without proper customer identification makes it difficult to properly trace communication networks. Hence, strengthening the legal framework and the capacity of law enforcement agencies is crucial to effectively disrupt organized crime groups.

Annalisa Pauciullo focused on the international legal framework explaining that the United Nations Convention Against Transnational Organized Crime is a criminal justice instrument with three protocols, one of which directly concerns migrant smuggling. As a universal instrument, this Convention provides standards to promote cooperation to combat transnational organized crime more effectively. To begin with, article 3 of the Protocol against the Smuggling of Migrants defines migrant smuggling as the procurement of the illegal entry of a person who is not a national or permanent resident of that country to obtain financial or other material benefit. However, the fact that the European Union regulation does not include the financial and material benefit as an element of this crime leads to inconsistencies in the application of this framework at the national level. The presence of the profit element as part of the definition of migrant smuggling may create an extra burden to prosecute smugglers. After a brief overview of the legal instruments in the field, Ms Pauciullo highlighted the emerging global agreement to fight the organized crime aspect of smuggling despite differences in national legislations. For an efficient combat, “following the money” and focusing on the profit element should support higher value prosecutions. Finally, she pointed out that special investigative techniques and wiretapping to secure evidence, especially on financial transactions, are essential to demonstrate the financial benefit.

As the final discussant of the panel, Burçe Dündar Arı concentrated on the efforts to develop capacity for border management within the scope of the European Union–Turkey cooperation. As a good example of a joint response to a crisis of mass migration, the European Union–Turkey statement of 18 March 2018 commits Turkey and the European Union in preventing the emergence of new smuggling routes in the Aegean region. In line with this, Turkey’s strong border management measures weakened the flows of irregular migration. Ms Arı emphasized, however, that the existence of physical walls undermines the “art” of border management. Moreover, border management reform requires new regulations and enhanced capacity to address mass migratory flows for humanitarian reasons, including risk analysis and strong infrastructure. Moreover, the presence of specialized and professional border guards with language skills and trained on detecting and dealing with situations involving vulnerable persons, such as unaccompanied minors and victims of human trafficking, is critical.

To conclude the panel, Berlan Pars Alan highlighted that the translation of strong legal frameworks into a coordinated judicial and law enforcement response is crucial in the context of irregular migration. He concluded by summarizing the main themes of the panel: (a) importance of jurisdiction; (b) coordination of law enforcement and criminal justice responses; and (c) overcoming legal differences through the use of the Protocol.

In the question-and-answer (Q&A) session, to a question regarding the application of the 1990 European Convention,<sup>3</sup> Mr Pantea responded that this legal tool is consistently used, and a key element is that prosecutors need to move swiftly. Following a question related to UNODC data, Ms Pauciullo explained that Member States are not obliged to share information with UNODC, as there is no mandatory reporting system. However, there is a constant call to States to supply more information to UNODC regarding prosecutions and caseload to strengthen UNODC's online database.

## 2.5. Panel II: Ensuring the safety and dignity of migrants

Panel II focused on aspects related to the safety and dignity of migrants in counter migrant smuggling legal frameworks, policies and operations. Migrants who make use of smugglers are often exposed to extortion, exploitation and abuse, and it is essential that migrant protection frameworks should adequately uphold the human rights of migrants and respond to the needs of those in vulnerable situations. The panel also discussed practical ways to reduce the exploitation and abuse of migrants at the hands of smugglers.

### Moderator

- Mr Berlan Pars Alan

### Panellists

- Mr Anh Nguyen, Head, Migrant Assistance Division, Department of Migration Management, IOM
- Ms Cecilia Manzotti, Associate Expert on Trafficking in Persons and Smuggling of Migrants, Crime Research Section, Research and Analysis Branch, Division for Policy Analysis and Public Affairs, UNODC
- Mr Jozsef Bali, Head, Land Border Sector, Joint Operations Unit – Operations Division, the European Border and Coast Guard Agency, Frontex

For a consistent and thorough understanding of the key terms in the field, Anh Nguyen primarily focused on the differences and similarities between human trafficking and migrant smuggling. To begin with, human trafficking can occur within a country, or by crossing a border legally or irregularly. Documents are often taken by traffickers to control migrants in trafficking situations. Whereas migrant smuggling is a crime against the State, human trafficking is a crime against an individual. In contrast to trafficking, smuggling must involve irregular border crossing, sometimes with false or stolen documents. The most important similarity between the two definitions is that, for criminal networks, they represent a profitable business involving human beings.

Hence, the most critical question in the field, according to Mr Nguyen, is how to converge the way these crimes are approached so that vulnerable migrants can be afforded the highest level of protection and assistance. Despite the clear evidence that smuggling operations have become more organized with increased exploitation and violence, migrants often trust smugglers to transport them to another country. At this stage, not only the existing mechanisms should be leveraged to protect migrants, but also safe, orderly and dignified migration should be facilitated and promoted to reduce the demand for smuggling.

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<sup>3</sup> Council of Europe, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, European Treaty Series – No. 141. Strasbourg, 8.XI.1990.

Cecilia Manzotti concentrated on the protection component of the Protocol against the Smuggling of Migrants. She explained that the Protocol requires States to take protection and assistance measures, as well as prevent smuggling and support the return of smuggled migrants. The overarching principles of the Protocol include the non-interference with other rights and obligations under international humanitarian law, human rights law, refugee law, in particular the principle of non-refoulement, the right to seek asylum and the prohibition of collective expulsions. Among the protection and assistance measures, Ms Manzotti explained that States have a responsibility to take all appropriate measures to protect the rights of smuggled migrants, to afford them protection against violence and assist migrants whose lives or safety are endangered in the course of being smuggled. She also underlined the Protocol's emphasis on the special needs of women and children, which States should take into account through appropriate documentation, family tracing and appointment of a guardian. The Protocol also calls for the effective protection of witnesses and their families from retaliation or intimidation in criminal proceedings. Finally, Ms Manzotti mentioned the importance of staff training and technical cooperation to prevent and combat migrant smuggling, as well as protect the rights of smuggled migrants.

Jozsef Bali gave an overview of Frontex activities to dismantle smuggling networks and concentrated on the respect of fundamental rights in operational activities. Mr Bali introduced Frontex as a European Union agency with legal personality and autonomous budget whose mission is to help European Union countries and Schengen-associated countries manage their external borders, harmonize border controls across the European Union and facilitate cooperation between border authorities. Frontex deploys and finances border and coast guard officers and provides technical support and expertise to assist Member States at the land, air and sea borders of the European Union. Mr Bali made clear that respect for fundamental rights, including the principle non-refoulement and non-discrimination, is at the core of all Frontex activities. For example, a new complaint mechanism was introduced as an additional tool for monitoring compliance with fundamental rights, which added transparency and accountability to the Agency's work. Mr Bali concluded that border control and the fight against cross-border crime are equally important to maintaining the security of the European Union external borders. Along these lines, integrated border management functions as the "first-line response" to smuggling and terrorism-related threats. Finally, inter-agency cooperation with the European Asylum Support Office, UNHCR, IOM, Europol and INTERPOL also plays a vital role in border management.

As the moderator, Berlan Pars Alan underlined the significance of translating the Protocol into national legislations to enable the law enforcement and other agencies in implementing the protection measures foreseen by the Protocol. Mr Alan concluded that the panel focused on the need to mainstream the measures of migrant protection and align national legislations with international law.

The Q&A session of this panel focused on the following: (a) translation of the Protocol into national legislations; (b) protection mainstreaming; (c) harmonization of existing laws with international conventions; and (d) implementation of existing tools. Mr Nguyen touched upon the difference between approaching irregular migration as a crime or as a social phenomenon and its impact on the mindset of those handling the issue. Mr Bali stressed the importance of including the protection principles in the operational procedures and training of the border guards. Similarly, Mr Nguyen underlined the significance of practical guidelines on addressing migrants in vulnerable situations. Finally, Ms Manzotti touched upon the need for training for all the actors involved in counter-migrant smuggling, including border security and police officers in migration hubs.



## 2.6. Panel III: Organized criminal networks and smuggling

Panel III focused on the business model of those criminal networks and individuals involved in migrant smuggling. The objective of this panel was to discuss the most effective investigative approaches to dismantle the smuggling business model. It focused on the detection and analysis of financial schemes used by migrant smugglers and on tracing, freezing and confiscating the criminal assets.

### Moderator

- Mr Florian Forster, Head, Immigration and Border Management Division, Department of Migration Management, IOM

### Panellists

- Mr Marios Anastasi, Criminal Intelligence Officer, Executive Directorate Police Services/Organized and Emerging Crime/Vulnerable Communities, INTERPOL
- Mr Bálint Kolozsi, Police Captain, Deputy Head of Intelligence Sub-Unit, Illegal Migration Unit, Transnational Crime Department, National Bureau of Investigation, Hungary
- Mr Nodar Begheluri, Inspector, Operational-Investigative Bureau of the Border Police, Ministry of Internal Affairs of Georgia
- Mr Javier T. Vazquez, Specialist, European Migrant Smuggling Centre (EMSC), Europol
- Mr Eliodor Tanislav, Chief-Superintendent, Liaison Officer for the Romanian Police, Southeast European Law Enforcement Center (SELEC)

Florian Forster described IOM's *Comprehensive Approach to Counter Migrant Smuggling* based on four pillars. Within the first pillar on protection and assistance to smuggled migrants, IOM assists States through well-organized reception, registration and identity management services, voluntary return and reintegration schemes and humanitarian border management. As to the second pillar on addressing the causes of migrant smuggling, IOM assists States in many ways including by facilitating regular travel and migration through visa and entry schemes and organizing targeted education and information campaigns. The third pillar focuses on enhancing States' capacity to disrupt the activities of migrant smugglers, which requires the coordination of legislation, border control measures and law enforcement activities. In this regard, IOM supports States in developing border management systems and by providing capacity-building and technical assistance. In respect to the fourth pillar, IOM conducts research, collects data and shares information on irregular migration and migration smuggling practices to assist States with developing evidence-based policies. All these pillars represent a holistic policy approach that should be promoted through national, regional and international projects.

Marios Anastasi underscored that INTERPOL recently established a separate counter-smuggling unit. Touching upon the importance of international cooperation to combat smuggling, he mentioned a new programme initiated by INTERPOL that brings together 134 experts from 160 countries to enable direct international communication among officers for faster investigation and prosecution. The programme brings high-ranking police officers from the border control and investigative units into direct contact for continuous information flow on the organized criminal groups involved in smuggling. Mr Anastasi also illustrated how the cooperation between different agencies strengthens the combat against migrant smuggling, highlighting the INTERPOL support for the establishment of the EMSC.

Introducing the Hungarian experience, Captain Bálint Kolozsi explained Hungary's measures to restrict the negative effects of mass migration and combat migrant smuggling. He provided the background for illegal migration in Hungary, in particular the mass migration of 2015, and drew attention to new trends and future targets. To begin with the peak of illegal immigration in 2015, more than 390,000

irregular migrants were detected at the borders and 20,000 within the Hungarian borders with the majority being Syrian, Afghan and Iraqi nationals. In the same year, 1,177 smugglers were arrested in Hungary. After the border closure, smuggling networks reorganized their criminal activity and reverted to other forms of illicit activity. Mass migration created a huge black market for criminals who made significant financial gains. The preventative measures taken by the Government of Hungary, including the physical and legal measures to close its borders, continuous presence at land borders and joint patrols, eliminated migrant smuggling by the end of 2015. However, recent intelligence reports reveal that the migrant smuggling activity has intensified again along the Hungarian–Serbian border. According to Captain Kolozsi, the new trends of 2016 revealed that the only organized crime groups that could survive the effects of the counter-migrant smuggling measures at the Hungarian borders were those with international links to all transit countries.

Smuggling practices had recently changed to include the recruitment of foreign drivers, the arrangement of vehicles with foreign or falsified license plates for the transportation of illegal migrants and frequent changes in the methods for money transfers (cash payments, from hand to hand or via *hawala*). Captain Kolozsi also drew attention to the findings whereby the stricter police measures resulted in an increase in smuggling fees and more aggressive behaviour by smugglers. To fight organized criminal groups involved in smuggling, he would prioritize the following measures: (a) strengthening cross-border cooperation in the Western Balkans; (b) exchange of information between European Union Member States in order to support investigations; (c) creating operational cooperation; and (d) initiating extraterritorial investigations.

Illustrating the Georgian case, Inspector Nodar Begheluri described the irregular migration flows from Georgia to Turkey, which decreased as a result of the cooperation between the two States. Here, the investigations revealed that irregular migrants often hid in special compartments of trucks or crossed the land border by foot, having paid the fees to smugglers in their origin countries. Due to such cash payments, Georgian authorities have difficulties in detecting financial transactions. Finally, Inspector Begheluri stated that illegal crossings were mainly facilitated by Georgian and Turkish citizens involved in smuggling chains with international connections.

Javier T. Vasquez provided an overview of Europol's work to dismantle the organized criminal networks involved in smuggling. He shed light on several characteristics of the smuggling business model whose engines are money laundering, document fraud and online trade in illicit goods and services. Migrant smuggling is a multinational business with suspects from more than 100 countries inside and outside of the European Union. Connected through complex transnational networks, recruiters and agents in the smuggling chain are found in source countries and transit hubs. Mr Vasquez also underlined that money flows do not reveal a consistent pattern, but that usually key facilitators receive the lion's share of the profit. While cash payments are the most common in the smuggling chain, another mode of payment is the informal value transfer system or *hawala*, which often circumvents the legal banking system and does not entail money movement and paper trail.

Mr Vasquez summarized the key priorities of the EMSC: (a) close focus on social media where smugglers advertise "safe" trips to the European Union; (b) supporting financial investigations; (c) mapping the available knowledge; and (d) identifying intelligence gaps and combating document fraud. He also observed that terrorist groups were taking advantage of the networks, routes and modus operandi of the organized criminal groups to enter undetected into Europe. For an efficient and effective response to smuggling in all these areas, EMSC consolidates joint ventures with key partners, pools intelligence and strengthens cooperation with other actors.

Chief Superintendent Tanislav focused on the regional cooperation against migrant smuggling in South-East Europe, highlighting that the detection of irregular migrants at the south-eastern borders represents 56 per cent of all detections in Europe. He described SELEC as a regional organization that functions as a law enforcement cooperation platform for the police and customs authorities of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, the former Yugoslav Republic of Macedonia, Republic of Moldova, Montenegro, Romania, Serbia and Turkey. Chief Superintendent

Tanislav explained SELEC's role in supporting investigations and crime prevention activities, facilitating information exchange and criminal intelligence, providing operational assistance, strategic analysis and threat assessments and conducting regional operations and joint investigations. SELEC responded to the large migration flows in 2016 by prioritizing counter migrant smuggling and illegal migration, strengthening the regional joint mechanism to investigate cases, utilizing the regional information exchange mechanism and investigating the relation between illegal migration and terrorism.

In the Q&A session, an important question was asked on whether smuggling cases with no element of profit should be assessed as crimes. In response, it was underlined that the economic benefit is required for the criminalization of smuggling in the Protocol against the Smuggling of Migrants; consequently, the activists who transported migrants across borders during the mass migration crisis in Europe cannot be regarded as criminals.

## 2.7. Panel IV: Strengthening the evidence base

Panel IV outlined the main findings of the IOM report on migrant smuggling data and research. It provided an opportunity to discuss the main recommendations of the report in respect to strengthening data and research partnerships, building research capacity in origin and transit countries, and using research more systematically to close some of the gaps in the existing knowledge on migrant smuggling.

### Moderator

- Mr Gervais Appave

### Panellists

- Professor Ahmet İçduygu, Dean of the College of Social Sciences and Humanities, Koç University
- Ms Marie McAuliffe, PhD, Head, Migration Research Division, International Cooperation and Partnerships Department, IOM
- Ayselin Yıldız, Assistant Professor, International Relations Department and United Nations Educational, Scientific and Cultural Organization, Chair of Irregular Migration, Yaşar University
- Ms Arezo Malakooti, Independent Migration Researcher

Professor Ahmet İçduygu provided a background on the existing research on migrant smuggling. He drew attention to the knowledge accumulation on migrant smuggling since the early 1990s and articulated the critical question as to whether the focus should be on “new or better research and data” on migrant smuggling. Answering such a question requires close attention to the specific challenges of migrant smuggling research and a clear understanding of the data needs in the field. Underlining that human smuggling is a complex and multifaceted phenomenon that widely affects societies, Professor İçduygu noted that its dynamics and mechanisms are still partially in the dark. As lack of good evidence may lead to policy miscalculations, evidence on smuggling should be gathered in the right way and at the right time and place.

As a data collection challenge, Professor İçduygu emphasized the complexities in framing and conceptualizing smuggling due to the blurred boundaries between smuggling and trafficking and the overlapping categories of refugees and other migrants. An emphasis on the criminal nature of smuggling may neglect those cases where networks of family members, friends and migrants themselves initiate and realize the irregular border crossings. In addition, the clandestine nature of smuggling, possible political sensitivities and transnationality often hinder the obtainment of reliable and comprehensive data. Research on migrant smuggling today should include a migrant agency perspective and awareness of its transnational dimension through the perspectives of the country

of origin, transit and destination. Comparative studies, mixed methods research and collaborative research projects involving State agencies, international organizations, scholars and independent researchers should be also promoted.

Following this in-depth presentation on the current state of migration research, Marie McAuliffe provided an overview of the existing research and data on smuggling based on the IOM report, *Migrant Smuggling Data and Research: A global review of the emerging evidence base*, published in 2016. Overall, the report presents two key findings. First, most of the existing research reflects the interests of destination countries rather than those of origin or transit countries. Second, while the volume and scope of data is increasing, most of the literature remains qualitative. Ms McAuliffe also pointed at specific challenges concerning the research in this field. A major difficulty in terms of data collection is the lack of government statistics and the understandable reluctance to share data with researchers on what can be criminal events. While the varying definitions of smuggling (such as altruistic or humanitarian smuggling and smuggling as transnational crime) constitute a challenge for comparative research, Ms McAuliffe also underlined that smuggling had received less attention due to the overwhelming prioritization of human trafficking.

Ms McAuliffe recommended linking knowledge about social and economic processes with knowledge about policy and practice. At the same time, exploring the dynamics between irregular migration, migrant smuggling and human trafficking through partnerships and multidisciplinary research methods would strengthen future research in the field. In this respect, States should be encouraged to give researchers greater access to their data through partnership arrangements, which may involve publication or not. Moreover, a broader and more consistent use of transnational data reporting tools (of UNODC and IOM) to gather real-time information is crucial. Ms McAuliffe stressed that a greater focus on smuggling from transit and origin country perspectives can benefit capacity-building efforts. To that end, there is a need for strengthening the research capacity of institutions within regions, such as West Africa, Central Africa and South-East Asia.

As a general recommendation, Ms McAuliffe mentioned the need to focus on emerging and priority topics. The balance between timely data on irregular migration flows and methodological rigour, including the use of non-traditional sources and changes in operational responses, can help better understand evolving smuggling dynamics. Likewise, research on humanitarian non-State actors who may be unintentionally assisting smuggling would be useful. Finally, a crucial element is the requirement of migrant-centric research that emphasizes migrants' experiences, decision-making and reasons for migrating irregularly.

Assistant Professor Ayselin Yıldız discussed her recent research on migrants' perceptions of the smuggling business and the decision-making processes of migrants. Her research was conducted in Izmir through a small-scale, migrant-centric, qualitative field work. Ms Yıldız presented a number of findings in terms of how migrant smuggling functions in the Aegean region. The research included Syrian, Iraqi, Afghan, Eritrean, Pakistani and Egyptian migrants who, in most cases, left their home countries because of war and family reunification. The majority of the migrants contracted the services of a smuggler at least once during their journey because of the lack of an alternative way to reach Europe. Most migrants found a smuggler through friend and family networks and much less through social media. Ms Yıldız also touched upon the numerous actors involved in the smuggling chain, which includes organizers, smugglers, facilitators, watchmen, "safe house" leaders, transporters, boat owners, captains and life vest sellers. She also revealed a crucial distinction between "good and bad smugglers" from the migrants' perspective. "Good smugglers" are described as "helpful, trustable, merciful life-savers doing humanitarian work" while "bad smugglers" are criminal if they endanger migrants' lives on the way to Europe.

Revealing the dynamism of the smuggling business, Ms Yıldız explained that the mode of transportation and the smuggling routes recently changed. Accordingly, boats and rubber dinghies as the main modes of transportation were replaced by jet boats for higher prices. Moreover, a new route involves taking a large ship from Turkey to Italy due to a general awareness among migrants that the Western Balkan route is closed, and reaching Europe via Greece has become too costly given the risk of being stranded in camps. Overall, these research findings illustrate the need to take into consideration this inherent dynamism throughout policy design.

As the final panel discussant, Arezo Malakooti introduced the smuggling industry with an emphasis on the Mediterranean and North Africa routes. In respect to the evolution of migration flows, findings demonstrate that the detected arrivals in Spain along the Western Mediterranean route have remained fairly stable, in contrast to the large increases occurring along the Central and Eastern Mediterranean routes. More specifically, between 2012 and 2014 arrivals along the Central Mediterranean far surpassed the other two routes. In 2015, arrivals on the eastern route increased greatly, exceeding those on the Central Mediterranean. By 2016, the Central and Eastern Mediterranean routes were used to similar extents by migrants. Ms Malakooti pointed out that in 2016, a total of 5,079 migrant fatalities were recorded in the Mediterranean, 90 per cent of which took place in the Central Mediterranean. On this route, Libya continues to be the main departure point for boats arriving in Italy.

Ms Malakooti, echoing Ms Yıldız's research, commented on the multiplicity of actors involved in the smuggling of migrants. As an example, *muhareb* is the smuggler who transports migrants, while *samsar* is the smuggler who creates the marketplace for the smuggling activity. In Libya, particular tribes, especially those historically marginalized, are quite active in the smuggling industry, which is often regarded as an income-generating activity rather than a crime. In fact, many tour guides moved into smuggling with the decline of tourism. Since 2014, the presence of armed militia groups in the smuggling chain led to more abuse against migrants. Finally, Ms Malakooti underlined the elements that make data collection in this region quite difficult: the clandestine nature of smuggling, the unstable environment and the dynamism of the migration flows.

In the Q&A session, questions were raised regarding the collection of data on the numbers of irregular migrants. Ms McAuliffe emphasized that such data is difficult to capture because a migrant's legal status can change from one day to another given varying policies and normative frameworks. In response to other remarks from the floor, Ms Yıldız emphasized smugglers' updated knowledge of news and political developments, as well as their influence on migrants' decisions, particularly in respect to the routes to reach destination countries. Ms Malakooti underlined the misinformation spread by smugglers who promise a safe and legal journey to Europe but are instead involved in human trafficking.

On future research priorities, Ms McAuliffe emphasized the opportunity to forge more effective partnerships and bring together the strengths of different organizations and individuals, including by taking into consideration the intelligence environment that can provide distinctive information. Ms Malakooti underlined the need for more ethnographic research to understand the motivations, profiles, perceptions and aspirations of those groups involved in migrant smuggling. Ms Yıldız underlined the general lack of regional studies, while Professor İçduygu mentioned the importance of testing the policy recommendation whereby opening up legal channels for migration would lead to a reduction in migrant smuggling.



## 2.8. Panel V: Improving regional and international cooperation

This panel discussed how cross-border judicial and law enforcement cooperation can be enhanced to more effectively counter migrant smuggling. It addressed the lessons learned, best practices and new cooperation models that bring together countries of origin, transit and destination, as well as obstacles that can hinder the fight against migrant smuggling.

### Moderator

- Mr Berlan Pars Alan

### Panellists

- Mr Mirwais Samadi, Director General, Consular Affairs under the Ministry of Foreign Affairs of Afghanistan
- Ms Agnieszka Sternik, Policy Officer, Irregular Migration and Return Policy Unit, DG Migration and Home Affairs under the European Commission
- Superintendent Tolga Becer, Deputy Chief of Migrant Smuggling Division in the Department of Combating Migrants Smuggling and Human Trafficking of the Turkish National Police
- Mr Tamer Kılıç, Regional Coordinator of Western Balkans and Turkey for International Centre for Migration Policy Development (ICMPD)

Director General Mirwais Samadi offered a historical background of Afghanistan's position as a country of origin and the economic, political and social push factors for migration. Lamenting the lack of regional cooperation and international assistance during and after the Cold War, Mr Samadi called for global cooperation to improve the inhumane and unsafe conditions faced by migrants and assist those who voluntarily wish to return to Afghanistan. Mr Samadi underlined that the protection of migrants' rights, as a duty of the international community, is essential at every stage of the migration cycle and reiterated Afghanistan's interest in international cooperation for the well-being of Afghan migrants.

Introducing the European Union approach, Agnieszka Sternik began her presentation by mentioning the European Union objective to ensure a swift and coordinated response to disrupt smuggling networks, structures and business models. The European Migration Strategy Agenda, adopted in 2015, promotes a multidisciplinary approach and cooperation between different stakeholders and States; in 2016, the EMSC was established at Europol. Despite the European Union legal framework, differences in national implementation and limited cross-border cooperation often hamper effective investigations. Ms Sternik also described the ongoing cooperation with the Libyan authorities, which includes the training of Libyan coast guards and border security staff, the establishment of mobile border units to quickly react to changing migration routes and the promotion of information sharing and capacity-building. As suggestions for effective counter migrant smuggling cooperation practices, she mentioned the establishment of a network of immigration officers, risk analysis cells in key locations and joint investigation teams in different countries.

Superintendent Tolga Becer called for international cooperation to identify, investigate, disrupt and dismantle transnational criminal organizations that contribute to migrant smuggling. An enhanced, smooth and well-functioning international cooperation in the field of migrant smuggling requires dialogue and information sharing at the regional and international level. In this regard, Mr Becer underlined the significance of cooperation through holding regular coordination meetings of relevant agencies, ad hoc meetings of relevant actors and non-binding and confidential information agreements. Finally, Mr Becer reiterated Turkey's commitment to regional cooperation in this cross-cutting area, reminding that counter-smuggling functions in similar ways as counter-terrorism.

Finally, Mr Tamer Kılıç offered a quick overview of the recent ICMPD activities in Turkey and at the global level: (a) organization of trainings for governments; (b) facilitation of data exchange among the Silk Route countries; and (c) establishment of contact points on irregular migration routes. He highlighted the increased international coordination of stakeholders to establish risk and operational centres, joint task forces and deployment of Frontex officers to different countries. He recommended the adoption of a multilayered approach to human smuggling, including through the following: (a) promoting legal migration; (b) establishing resettlement programmes; and (c) readjusting visa policies, labour market policies, reintegration and integration policies. These policies should be implemented in parallel with activities supporting economic growth in origin and transit countries.

To conclude, Berlan Pars Alan, highlighted three findings of the panel. First, the incorporation of research and analysis in the policymaking process requires communication between practitioners, researchers and policymakers. Second, the swift and flexible coordination and communication between the law enforcement and criminal justice agencies of different countries is important. Finally, Mr Alan highlighted the recurrent theme in the panel, that is the need to address the drivers of international migration and crime in a balanced way.

Mr Hasanin Mezoqhi, Vice-Consul at the Consulate General of the Libyan Arab Jamahiriya in Istanbul, in his intervention from the floor, pointed out that increasing irregular migration is a major concern for Libya due to its strategic location between Europe and Africa, where it connects the desert with the Mediterranean Sea. Mr Mezoqhi highlighted that irregular migration should not be perceived solely as a matter concerning Europe and Libya. In this regard, Libya emphasized the need for cooperation with neighbouring countries to build capacity and collaborate on law enforcement activities, including the provision of electronic, logistical and surveillance support in international waters.

In the Q&A session, Ms Sternik mentioned a European Union plan for a statistical exercise that includes data collection on smuggling. Regarding the evaluation of counter-migrant smuggling policies, Ms Sternik explained the European Union commitment to carefully analyse policy consequences and assess whether the combat against smuggling may have adverse consequences for the stability of certain regions.

## 2.9. Closing remarks

The conference closed with remarks by Ms Ece Acarsoy, Deputy Director General for Migration, Asylum and Visas at the Directorate General of Consular Affairs of the Ministry of Foreign Affairs of Turkey. Ms Acarsoy reiterated the significance of unified and concerted efforts for policy development and implementation to effectively combat migrant smuggling. Turkey is determined to protect migrants' rights and dignity; the protection of lives is a collective duty, and eliminating discrimination, xenophobia and racism is of utmost importance. As migration features highly on the international agenda, Turkey supports IOM's comprehensive approach to counter migrant smuggling. The Deputy Director made two recommendations. First, more migration research should be conducted in the region to improve the migration data and better understand challenges. Second, collaborative systems that enable immediate action to counter migrant smuggling should be prioritized. In this regard, while most countries already have the necessary legal framework and excellent law enforcement capacity, the enhancement of international cooperation and responsibility sharing is crucial. In conclusion, countries should take swift decisions and actions, because protecting migrants' lives and dignity is a major responsibility regardless of whether migrants are regular or irregular.

## 3. ANALYTICAL REVIEW AND WAY FORWARD<sup>4</sup>

### 3.1. Insights from the conference

The main conclusions were presented by Jørgen Carling, Research Professor at PRIO. The conclusions were based on the five panels and discussions held during the two-day conference. Professor Carling assembled the main conclusions of the conference under four headings.<sup>5</sup>

First, in terms of strategic approach, three points of particular importance emerged from the presentations and discussions at the conference:

- (a) The necessity of respecting the disparate yet legitimate concerns of different actors, such as the possibility of ensuring migrant protection and access to asylum procedures along with border security.
- (b) The need for clarity and sincerity in the motivations for combating smuggling, avoiding situations in which the well-being of migrants is used to justify measures that increase migrants' vulnerability.
- (c) The importance of seizing the unique opportunity for a long-term perspective in the context of the global compact for migration, rather than concentrating on short-term measures.

Second, law enforcement and criminal prosecution was a central theme in the conference from which several conclusions emerged:

- (a) National legislation should be aligned with the Protocol against the Smuggling of Migrants by Land, Sea and Air (the Protocol) due to the transnational character of smuggling and the incorporation of a holistic approach that considers migrant vulnerabilities.
- (b) Information must flow in both directions between prosecutors and field staff to build cases against smugglers.
- (c) Provisions for special investigative measures, such as electronic interception of communications, can potentially allow for pursuing higher value targets in smuggling networks.

Third, the quality of human resources came up in different sessions as an area with the potential to enhance the effectiveness of counter-smuggling efforts:

- (a) Front-line staff must sometimes manage highly demanding situations in which decisions have operational, legal and ethical implications; capacity-building is essential for their preparedness.
- (b) A holistic approach to technological and human resources can improve border management, such as when surveillance technology allows for deploying fewer but more highly trained personnel.
- (c) Cross-border collaboration is enhanced by the combination of formalized structures and procedures and personal relationships between key personnel.

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<sup>4</sup> Among the three authors, Jørgen Carling is responsible for this section of the report.

<sup>5</sup> The points are the same as were raised at the conference, but clarifications and elaboration have been added in the course of writing the conference report.

Fourth, the conference reflected the need and potential for better knowledge and data. Several specific opportunities and challenges were salient:

- (a) There are underutilized opportunities for cooperation between sectors, such as national governments, the academic community, international organizations and NGOs in the production and analysis of data.
- (b) There are severe geographical imbalances in the production of knowledge about migrant smuggling; greater efforts are needed to build capacity and create opportunities in countries of origin and transit.
- (c) Much of the current effort in documentation and research is focused on documenting the latest smuggling patterns; more research is needed to also understand processes, including policy impacts.
- (d) It remains a challenge that, even where extensive research is available, entrenched discourses in the media and policy circles often remain resistant to new knowledge.

## 3.2. The relationship between control and protection

The relationship between control and protection was a recurrent theme at the conference. Discussions of migrant smuggling often refer to the need for a balance between control and protection. On the one hand, States have a sovereign right to control their borders and people's passage across them, as well as combat criminal activity. On the other hand, States also have legal and moral responsibilities towards migrants. Those who resort to migrant smugglers due to fear of prosecution may be entitled to refugee status under international law. Moreover, States also have a responsibility to protect and assist migrants in vulnerable situations in the context smuggling.

The problem with references to “balance” is that it suggests an inverse relationship, i.e. that more of one necessarily leads to less of the other. The implication is that improving protection means losing control, and vice versa. However, as IOM pointed out at this conference, the protection of migrant rights throughout the migration cycle is only possible in an environment where human mobility is well governed. For instance, assisting migrants in distress – whether at sea or land borders – would often require surveillance and the adequate presence of staff. The same technology and manpower would ensure control by the State. While control is not incompatible with protection, it does not guarantee it either. Technology and resources must be adequate for search and rescue needs – as opposed to only surveillance and law enforcement – and staff at all levels must be amply trained to handle the protection elements of border management.

In border management and other aspects of counter-smuggling activity, it is therefore more appropriate to speak of comprehensiveness, rather than balance. A comprehensive approach implies being willing and prepared to manage all sides of the State's responsibility, including those that concern the protection of migrants.

At the political level of global migration governance, however, there is a genuine challenge of balancing conflicting interests. In particular, there is a tension between States' desire to control (in the sense of minimizing) immigration, and their relinquishing of such control through the 1951 Refugee Convention and the 1967 Protocol. Some signatory States have responded to this tension by seeking to prevent people who might qualify for protection from accessing their territories through measures, such as visa restrictions, carrier sanctions and cooperation with transit countries.

It is this tension that has enabled much of the global market for migrant smuggling. In the epilogue to the most authoritative volume on the international law of migrant smuggling, the world's leading experts conclude that States “exploit a weak and outdated legal framework around asylum to

ensure that their humanitarian obligations do not conflict with perceived national self-interest”<sup>6</sup>. It is significant that this conclusion is drawn in a book dedicated to the law of migrant smuggling.

Strategic approaches to countering migrant smuggling while ensuring the protection of migrants, including refugees, should therefore be pursued simultaneously at two levels. Long-term solutions must address the problems of migration governance that create a demand for migrant smuggling. In the short term, counter-smuggling measures must be designed and evaluated in a comprehensive way that considers migrants’ vulnerabilities and protection needs. These perspectives inform the proposed actionable commitments.

### 3.3. Motivations for counter-smuggling measures

The relationship between obligations towards refugees and desires to minimize immigration represent a particular challenge in approaching migrant smuggling. But the counter-smuggling agenda reflects a broad range of security, humanitarian, economic and political concerns. While the call for the elimination of migrant smuggling is virtually unanimous, it is pertinent to distinguish between different motivations for counter-smuggling efforts.

This is because the effectiveness of counter-migrant smuggling measures can only be evaluated on the basis of more specific objectives. The strategies for countering migrant smuggling are diverse and have disparate consequences and implications, often problematic ones. Clarity about the motivations for counter-smuggling measures allows for better cost-benefit analyses and fosters an informed debate about ethical and political dilemmas.

What follows is an overview of eight distinct motivations for fighting migrant smuggling. They differ in terms of their salience and explicitness, and they are not equally legitimate. However, they are all important. Bringing the totality of motivations into the discussion helps to make sound decisions and ensure accountability. Recognizing the motivations does not imply condoning them.

(a) Preventing loss of life on migratory routes and averting exploitation

Migrant smuggling has staggering human costs, including thousands of deaths and widespread traumatization. Thus, countering migrant smuggling should first aim to prevent the loss of life. This is a *sine qua non* for upholding the rights and dignity of all migrants. The social and economic costs to migrants can also be grave if they incur large debts to smugglers.

(b) Reducing illegal immigration

When smuggling facilitates the unauthorized entry of people with no intention to seek asylum, it contributes to illegal residence and illegal work.<sup>7</sup> Fighting migrant smuggling thus helps ensure that immigration is subject to the rule of law. This is the classical motivation for the fight against smuggling, tied to the State’s ability to assume its responsibilities.

(c) Preventing unfounded asylum claims

In many parts of the world, smuggling has shifted from being primarily a pathway to illegal work to becoming a pathway towards legal residence via the asylum system. When asylum applications are rejected, returning applicants to their country of origin is often costly and sometimes impossible. Reducing the number of unfounded claims is therefore beneficial to States as well as to migrants who are being returned, sometimes indebted from smuggling fees.

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<sup>6</sup> A.T. Gallagher and F. David, *The International Law of Migrant Smuggling* (Cambridge University Press, Cambridge, 2014), p. 738.

<sup>7</sup> The majority of undocumented immigrants in many countries are overstayers rather than illegal entrants.



Smugglers, however, have an incentive to create demand for their services by producing false expectations for the possibility of being granted asylum. The fight against migrant smuggling can therefore, in some cases, help reduce the number of unfounded asylum claims.

(d) Minimizing protection obligations

The asylum system requires physical presence on a country's territory in order to launch an application. But if the application has merit and the State has signed the 1951 Refugee Convention, then protection must be granted. Most high-income countries endorse the Refugee Convention, yet wish to minimize asylum immigration. When many of the smugglers' clients may fear persecution, anti-smuggling measures can be motivated by the wish to minimize protection obligations.

(e) Obstructing illegal funding streams

Migrant smuggling can be a valuable source of income for terrorist groups and criminal organizations. The elimination of this funding stream would therefore contribute to the broader fight against terrorism and organized crime.

(f) Showing political resolve and claiming moral superiority

Migration management is fraught with conflicts of interest and political disagreements. At the same time, irregular migration creates demands for political leadership. In this context, counter-smuggling measures provide an uncontroversial opportunity for demonstrating assertiveness. When smugglers are understood as ruthless criminals who cynically exploit migrants, counter-smuggling efforts provide foundations for claiming moral superiority. These considerations can be politically important regardless of the merits or effectiveness of the actual measures.

(g) Securing resources or bargaining power

Counter-smuggling efforts create opportunities for individuals, organizations and States to pursue material or political gains. Certain law enforcement and paramilitary organizations have ensured substantial growth in staff and budgets through promoting the counter-smuggling agenda.

These seven motivations, with differing degrees of salience, drive the counter-smuggling policies and measures that have become a centrepiece of international migration management. In order to make progress towards eliminating the detrimental consequences of smuggling, it must be recognized that there are tensions between legitimate interests – for instance between States in different positions, and between migrants and States – as well as potentially illegitimate interests.

By making the specific motivations for counter-smuggling measures explicit, it is possible to assess their effectiveness. Such assessment must consider the totality of direct and indirect effects of counter-smuggling measures in light of their stated objectives.

As an example, counter-smuggling measures may be justified publicly with respect to reducing harm to migrants, yet have the effect of exposing migrants to greater danger. This has occurred, for instance, when increased counter-smuggling efforts at the most accessible border sections have created a shift towards more hazardous routes.

### 3.4. Proposed actionable commitments

In light of the insights from the conference, a series of actionable commitments can be put forth for consideration.<sup>8</sup> These have particular relevance in the context of the process towards the global compact for migration and the global compact on refugees.

(a) Work towards sustainable, realistic and sound responses to refugee protection

A very large part of the migrant smuggling market would disappear if the international community provided adequate refugee protection that is accessible without resorting to smugglers. Developing a framework for such responses is a formidable challenge, but an unavoidable one if migrant smuggling is to be eliminated. This point illustrates the need for close coordination of the global compact for migration and the global compact on refugees.

(b) Protect the established, inclusive definition of migrants as a group that includes refugees

Migrant smuggling can only be combated in an effective and responsible way if it is recognized that smuggled migrants may include individuals entitled to international protection. When migrants are redefined as “not refugees”, counter-smuggling measures that amount to refoulement may appear justifiable. Even on smuggling routes where only a small proportion of migrants have a possibility of being recognized as refugees, counter-smuggling measures and other components of migration management must be based on the assumption that every migrant might be a refugee.

(c) Actively uphold the legal distinction between trafficking and smuggling

While there are overlaps in specific instances of migrant smuggling and human trafficking, it is imperative to maintain the distinction between the two types of crime. A comprehensive approach to migrant smuggling is hampered by the conflation with trafficking that misrepresents the dynamics at work. The practice of using “traffickers” and “smugglers” interchangeably should be eliminated.

(d) Promote family reunification provisions for refugees to reduce the demand for smuggling

Being smuggled is a potentially dangerous and traumatic experience for all migrants, but certain groups, including women and children, are particularly vulnerable. Refugees – whose smuggling journeys often lead to legal residence – should be ensured speedy family reunification to reduce the number of individuals in each family who must resort to being smuggled in order to access international protection.

(e) Promote legal pathways for migration

To prevent migrant smuggling, it is important to increase legal pathways for migrants. For safe, regular and orderly migration, legal migration opportunities should be enriched and diversified.

(f) Promote consistency with the Protocol in national legislation

National legal frameworks on migrant smuggling should be reviewed to ensure consistency with the Protocol. Such consistency supports international cooperation in the fight against transnational crimes. Moreover, the Protocol serves to ensure a comprehensive approach to different aspects of migrant smuggling, including protection of smuggled migrants, and non-criminalization of smuggled migrants and those who facilitate migration for humanitarian or family reasons.

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<sup>8</sup> The proposals are formulated by the authors with a view to combining insights from the conference with broader concerns in the field of migration management and counter-smuggling efforts. Like the remainder of this report, they do not necessarily represent consensus views.

- (g) Ensure that prosecution and sentencing guidelines take into account migrants' exposure to risk or harm

Article 6(3) of the Protocol requires States to ensure that national legal frameworks establish aggravating circumstances when the migrant smuggling offences endanger migrants' lives and safety and entail their inhuman and degrading treatment. The prosecution and sentencing of smugglers should adequately reflect these aggravating circumstances regardless of smugglers representing an organized criminal network or not.

- (h) Prevent undue prosecutions of migrants who perform smuggling-related tasks

Research in different parts of the world has demonstrated that the line between the migrant smuggler and the smuggled migrant can be blurred. This is, for instance, the case when smugglers delegate responsibilities to selected migrants through coercion or in return for a reduced fee, or when individuals in an abandoned group of migrants take charge in order to complete the journey. Such individuals may be identified as "organizers" and subjected to prosecutions that are disproportionate to their role and disregarding their right to assistance and protection as smuggled migrants.

- (i) Promote the prosecution of officials who benefit from migrant smuggling

Accounts of migrant smuggling and counter-smuggling measures are often accompanied by description of the industry's enormous profits. However, a large proportion of proceeds from smuggling are distributed as bribes to border guards, police, immigration officers, consular staff and other officials or private-sector workers charged with immigration control tasks. Prosecutors should seek to build cases that "follow the money" not only to the top of smuggling networks, but also to officials who facilitate and benefit from the business.

- (j) Ensure the prosecution of all crimes committed against smuggled migrants

Migrants who are smuggled are frequently victims of extortion, kidnapping, torture, rape and other forms of abuse. Many of these crimes are committed not by smugglers, but by others who prey on their vulnerability. A narrow focus on arresting and prosecuting only smugglers would therefore be an insufficient way of using law enforcement capabilities to protect smuggled migrants.

- (k) Encourage the consideration of special investigative measures that can support higher-value prosecutions

The use of special investigative means is restricted for reasons linked to their invasive nature, potential for abuse and inherent threats to the right to privacy. In counter-smuggling investigations, special investigative means can potentially allow for higher-value prosecutions in criminal networks. Expanded provisions for the use of such means may be justifiable, provided that legislation, operational procedures and training provide the necessary safeguards for responsible use.

- (l) Review and improve the border management framework

Migration dynamics in Europe and the Mediterranean region since 2014 illustrate the sometimes rapid changes in border-related challenges. There is a need for broader coordination and cooperation than foreseen in traditional border management approaches.

- (m) Promote comprehensive training and operational procedures for front-line personnel

A comprehensive policy approach should inform the procedures and training of border guards and other front-line personnel. In particular, there is a need for operational procedures, practical guidelines and professional cultures that ensure the protection of migrants in vulnerable situations.

- (n) Strengthen frameworks, routines and relationships for cross-border collaboration between officials

Migrant smuggling is typically a transnational crime, and smuggling networks sometimes comprise a large number of nationalities and operate in a range of countries. Effective cross-border cooperation between officials in the countries concerned requires both formalized structures and informal relationships. While such cooperation has expanded in recent years, there is potential for learning from best practices in improving existing frameworks and creating new ones where pertinent.

- (o) Improve the sharing of data on irregular migration, migrant smuggling and counter-smuggling measures

The data on irregular migration, migrant smuggling and counter-smuggling measures that is being collected by various government agencies, international organizations, academic institutions, and civil society should – to a much larger extent than today – be openly shared for analytical purposes (rather than operational purposes). The fragmentation and inaccessibility of some data represents a great loss for understanding the processes at work and formulating more effective responses. Data-sharing partnerships can be set up in ways that safeguard legitimate concerns about operational secrecy, confidentiality and intellectual property rights and protection of personal data privacy.

- (p) Improve collaboration between governments, international organizations, academia and civil society

Many sectors of society are concerned with migrant smuggling and its consequences. Diverging interests and needs for independence and integrity can limit the scope for collaboration between governments, international organizations, academia and civil society. However, there is also potential for partnerships focused on common objectives. These sectors have complementary strengths in terms of operational capacity, access to data, analytical capacity and community relations that should be brought together in joint efforts to minimize the negative consequences of migrant smuggling.

