

Human Trafficking and Smuggling of Migrants: Conceptual Distinction

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introduction

“Human trafficking” and “migrant smuggling” are two distinct crimes that often are erroneously conflated or referred to interchangeably. Clarifying the differences between the two is critical to the development and implementation of sound government policies.

Irregular migration patterns

Irregular migration has been defined by the International Organization for Migration (IOM) as movement of persons outside the laws, regulations, or international agreements governing the entry into or exit from the State of origin, State of transit or state of destination. Migrants in an irregular situation are those

residing in a country or passing through a transit country without the required visa, travel documents or documents permitting them to enter or stay in the country as per the law, who also known as undocumented migrants.

It is important to note however that not all irregular migrants' cross borders without authorization. Most enter countries regularly but overstay visas and become undocumented or irregular migrants along their migratory path. Some were born to undocumented parents and therefore lack legal identity.

Irregular migration overall poses significant challenges to all parties involved. Destination countries must manage the influx of irregular arrivals, including processing and providing for them, which often requires substantial resources. Irregular migration can also fuel criminal networks of traffickers and smugglers, potentially threatening security. Countries of origin also face challenges in reintegrating returned migrants, who may face stigma and difficulties adapting.

Many migrants die or go missing during perilous, irregular migration journeys. Between 2014 and 2024, more than 60,000 migrants have died while trying to migrate irregularly, with over 25,000 remains never recovered. The Mediterranean is the deadliest irregular migration route, followed by Africa, the Americas, Asia, Western Asia, and Europe.

Smuggling of Migrants (SoM)

Migrant smuggling a third party helps another person to enter a country where they are not a citizen or permanent resident or where they do not have the required permission or authorization from the government to enter and stay in the country.

The person helping, known as the smuggler, does this to make money or gain some other benefit, as per the Protocol Against The Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime¹.

Smugglers typically work in networks, with each smuggler covering a part of the journey from the migrant's origin to their destination, and the service ends upon arrival at destination. Many migrants (including refugees) have only limited ability to access regular pathways, and smugglers know and exploit this for profit.

Example: Encountering tremendous violence in his conflict-torn home country, Amir was introduced to a man who told him he could get to another country for a \$1,000 fee. The man insisted he would get Amir there safely by boat. Amir paid him for the travel and once in the new country, he never saw the other man again. There was no force, fraud, or coercion, and Amir was not subjected to forced labor or forced to engage in commercial sex acts. Amir was smuggled and is not a victim of trafficking.

Human trafficking

Human trafficking is a crime involving the exploitation of an individual for the purposes of compelled labor or a commercial sex act through the use of force, fraud, or coercion.

The concept of human trafficking emerged from centuries' work on international law, on issues including the suppression of trading in women and girls for sexual exploitation, trafficking in women and children, and slavery and practices similar to it, as well as trafficking and exploitation involving the prostitution of others. Yet, it was not until 2000, with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol)² supplementing the United Nations Convention against Transnational Organized Crime, that an international definition to criminalize "trafficking in persons" was agreed upon and accepted. As of July 2024, 182 United Nations Member States have ratified the Trafficking Protocol, more ratifications than many other international treaties have received (UN Treaty Collection).

The definition of human trafficking includes three key elements. For children (under 18) however, only the act and purpose need to be proven (Ibid., Articles 3(c) and (d)):

- An "act" (such as recruiting or transporting people);
- A "means" (how the act is done, like through coercion or deception);

¹ SoM_Protocol_English.pdf

² The Protocol against Trafficking in Persons, which supplements the United Nations Convention against Transnational Organized Crime (UNTOC), is the primary legal instrument concerning trafficking in persons. It was adopted by the General Assembly under resolution 55/25 on 15 November 2000 and came into force on 25 December 2003.



- A “purpose” (the goal of exploitation, such as forced labour or sexual exploitation).

Despite global efforts, human trafficking remains a profitable crime. The International Labour Organization (ILO) estimates forced labour alone generates about USD 150 billion annually³. This conservative figure excludes profits from other forms of trafficking, often hidden through money laundering and cryptocurrencies. The United Nations Office on Drugs and Crime (UNODC) reported an increase in detected trafficking victims from fewer than 20,000 in 2003 to about 49,000 in 2018. This rise reflects both improved identification and reporting capabilities, as well as the persistence of trafficking.

Example: A recruiter deceived Marie into taking a job overseas in a restaurant, promising her a salary she could not pass up and helping her obtain a visa to work in the destination country. Upon arrival, she was told by her new “boss” that there was no job in a restaurant and that she would still have to pay off the cost of finding her the job and transporting her to the country. He forced her to engage in prostitution and also threatened Marie that he would tell her family what she was doing if she didn’t continue until she paid off her so-called debt. Marie is a trafficking victim: fraud, coercion, and force were used to subject her to sex trafficking.

Blurred lines between migrant smuggling and human trafficking

Human trafficking and migrant smuggling are often confused, but they are different crimes with different international laws regulating them (see the two Protocols mentioned in the sections above on Migrant Smuggling and Human Trafficking). The key difference is purpose: where migrant smuggling facilitates irregular movement for profit, human trafficking seeks to exploit individuals through coercion (Gallagher, 2015).

The two crimes can intersect, especially along irregular migration routes. Table 2 below outlines the main key differences between trafficking in persons and migrant smuggling⁴

³ Traffickers making \$236bn in illegal profits, ILO reports

⁴ The Inter-Agency Coordination Group against Trafficking in Persons (ICAT)

	Trafficking in Person (TiP)	Smuggling of Migrants (SoM)
Geogra-physical outline	Does not necessarily involve crossing a border	Involves irregular border crossing and entry into another country
End goal	Trafficking's purpose is the exploitation of the victim in some manner to generate illicit profits for the traffickers	The relation between smuggled migrant and smuggler is a commercial transaction: smugglers facilitate the migrants irregular entry across borders to obtain a financial or other material benefit
Consent versus coercion	Victims of Trafficking have either never consented or, if they initially consented, that consent has been rendered meaningless by coercive means of the traffickers	Smuggled migrants generally consent to being smuggled. Smuggling does not need to include coercive means
Nature of the commodity or "good"	Commodity is the person	Commodity is a service: facilitating illegal entry into another State
Nature of offense	Traffickers commit a crime against individuals. Victims of trafficking are considered victims of a crime under international law.	Smugglers commit a crime against the State (laws, regulations, requirements, etc). Smuggled migrants are not considered victims under international law.

Nevertheless, people who are smuggled can be extremely vulnerable to human trafficking, abuse, and other crimes, as they are illegally present in the country of destination and often owe large debts to their smugglers. Smuggled migrants sometimes flee violence in their home country; others simply seek better lives, economic opportunities, or to reunify with family members abroad. Some smuggled persons may be subjected to sex or labor trafficking while in transit or at their destination, and these individuals are trafficking victims. However, not all smuggling cases involve human trafficking, nor do all cases of human trafficking begin with migrant smuggling.

Legal response

The impact of the Protocol against Trafficking in Persons on national legislation

Article 34(1) of UNTOC requires States parties to take all necessary measures (including legislative and administrative measures) to ensure the implementation of their obligations under the Convention.

Article 34(2) requires States parties to enact legislation under their national law to



criminalize the activities described in articles 5, 6, 8 and 23 of the Convention “independently of the transnational nature or the involvement of an organized criminal group”.

Article 4 of the Protocol provides that “the Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organized criminal group, as well as to the protection of the rights of persons who have been the object of such offences”.

The definition of trafficking in the Protocol has been widely adopted by many countries in their national laws. However, certain difficulties have persisted in interpretation of aspects of the definition (for example, the interplay between the use of prohibited “means” and victim consent as a potential defense, and what is meant by “purpose of exploitation” and “abuse of a position of vulnerability”). States must prioritize addressing and resolving these issues in their legislation and case law because characterizing certain conduct as trafficking has important consequences for both perpetrators and victims.

In addition to UNTOC, the Protocol against Trafficking in Persons and national legislation, a few regional initiatives were designed to address trafficking. In regions where no specific regional legal instrument addresses trafficking in persons, other documents may be referred to. In the Arab region, the Arab Model Law on Combating Human Trafficking and the Arab Strategy to Combat Human Trafficking⁵ were both adopted in 2012. Does the distinction matter?

Human trafficking and migrant smuggling often overlap in reality, which makes it particularly important that policymakers, law enforcement, immigration officers, and civil society organizations are conscious of the differences between them. When human trafficking is confused with migrant smuggling, trafficking victims may not receive the protections, services, or legal redress to which they are entitled and may be vulnerable to being re-exploited.

For these reasons, national immigration and anti-trafficking laws should provide clear definitions of migrant smuggling and human trafficking and differentiate the associated penalties. Human trafficking awareness training is also important for immigration, law enforcement, and judicial officers. Screening for human trafficking indicators is necessary any time law enforcement officials identify migrants during operations associated with migrant smuggling.

Implications of understanding:

Informing law enforcement: Proper training can help law enforcement distinguish between these crimes and apply the correct legal framework.

Policy development: Clear definitions inform policymakers when crafting laws and support systems that address the specific needs of victims.

Public awareness: Educating the public can lead to increased reporting of trafficking cases and less stigmatization of migrants and smuggled individuals.

⁵ 5thConsultationsM.Mattar.pdf

By simultaneously concentrating on the protection of and assistance to smuggled migrants whose lives are in danger; addressing the causes of irregular migration; enhancing States' capacity to disrupt the activities of migrant smugglers; encouraging cooperation among States; and promoting research and data collection on the phenomenon, the Arab States would be better able out to effectively implement responses that prevent and disrupt smuggling activities and networks.

Manuals, Reports and Toolkits

Toolkit to Combat Smuggling of Migrants, Tool 9 Prevention of the smuggling of migrants, Toolkit to Combat Smuggling of Migrants. Tool 9: Prevention of the smuggling of migrants;

IOM Global Compact Thematic Paper, Countering Migrant Smuggling, IOM-Thematic-Paper-Counter-Smuggling.pdf ;

IOM Toolkit to Combat Trafficking in Person: facilitate the sharing of knowledge and information among policymakers, law enforcers, judges, prosecutors, victim service providers and members of civil society who are working at different levels towards these same objectives, Toolkit to Combat Trafficking in Persons | Counter Trafficking In Emergencies ;

Harnessing accumulated knowledge to respond to trafficking in person, A Toolkit for Guidance in Designing and Evaluating Counter-Trafficking Programmes | United Nations Network on Migration ;

United Nations Office on Drugs and Crime (UNODC). Online Edition - Toolkit to Combat Trafficking in Persons, 2008.

United Nations Office on Drugs and Crime (UNODC). Toolkit to Combat Smuggling of Migrants, 2010.

International Organization for Migration (IOM). "Glossary on Migration." International Organization for Migration, 2019.

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