

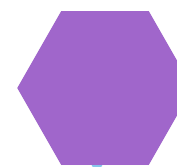


The Role of International and Domestic Cooperation in Combatting Migrant Smuggling

CFATF RESEARCH DESK
JUNE 09TH, 2022.



What is Migrant Smuggling?



United Nations (UN) Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol), adopted in November 2000, defines smuggling as:

“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”

Article 3 of the Smuggling of Migrants (SOM) Protocol establishes that SOM is comprised of the following elements:

1. procuring the illegal entry of another person;
2. into another state;
3. for the purpose of financial or material gain.

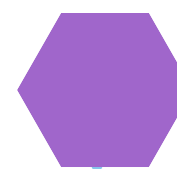


Extent of Migrant Smuggling

Sources:

(1), (2) (3) FATF (2022). ML/TF Risks Arising from Migrant Smuggling, FATF, Paris, France.

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



- There are no reliable global statistics on the migrant smuggling due to its clandestine nature. (1)
- The UN estimated that each year there are approximately 3 million irregular entries into the U.S. (2)
- In 2016, more than 181,000 migrants crossed the Mediterranean from North Africa to enter Italy. (3)
- In 2016, 7,495 migrant deaths were recorded worldwide, most committed by smugglers. By August 2017, 3,420 deaths were recorded. (4)



“It is estimated that two of the principal smuggling routes - leading from East, North and West Africa to Europe and from South America to North America - generate about USD \$6.75 billion a year for criminals. The global figure is likely to be much higher”.



Source: UNODC (n.d.). Transnational Organized Crime: Let's put them out of business.



International Cooperation

- The UN Convention against Transnational Organized Crime is the basis for international cooperation. Article 1 states that its purpose is to promote cooperation to prevent and combat transnational organized crime more effectively.
- Under art. 2, the purpose of the SOM Protocol is to promote cooperation to prevent and combat the smuggling of migrants, while protecting the rights of smuggled migrants.
- International cooperation is vital for successful transnational investigations, prosecutions and sentencing.
- The SOM Protocol requires countries to cooperate in areas such as border measures, travel documents, prevention and return of migrants.

Source: UNODC. 2010. Basic training manual on investigating and prosecuting the smuggling of migrants. UNODC, Vienna.



Forms of International Cooperation

The UN Convention against Transnational Organized Crime has provisions on both formal and informal cooperation which are applicable SOM Protocol:

- Extradition (art. 16)
- Transfer of sentenced persons (art. 17)
- Mutual legal assistance (MLA) (art. 18)
- Joint investigations (art. 19)
- Cooperation in using special investigative techniques (art. 20)
- Transfer of criminal proceedings (art. 21)
- International cooperation for purposes of confiscation (art. 13)
- Law enforcement cooperation (art. 27)



Mutual Legal Assistance (MLA)

- It is the process States use to provide and obtain formal government-to-government assistance in criminal investigations and prosecutions. (1)
- It is a formal cooperation tool as one State requests another State to exercise coercive powers on its behalf, and/or taking steps to obtain evidence that must be admissible in a criminal trial. (2)
- FATF Recommendation 37 states that countries should rapidly, constructively and effectively provide the widest possible range of MLA in relation predicate offences. (3)
- It is necessary for countries to have adequate legal basis for providing assistance and have in place treaties, arrangements or other mechanisms to enhance cooperation, where needed. (4)

Sources:

(1) & (2) UNODC. 2010. *Trafficking in Persons and Smuggling of Migrants: Guidelines on International Cooperation*.

(3) & (4) FATF. 2013-2021. *Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems, updated October 2021*, FATF, Paris, France.



Interdependence of International Cooperation Mechanisms

- Informal assistance can lay the foundation for subsequent formal MLA requests.
- Formal MLA and informal agency-to-agency assistance can occur at the same time.
- MLA often occurs after direct agency-to-agency cooperation.
- MLA can complement extradition where both the alleged offender and the evidence of a crime are in a foreign country.
- MLA can be used to obtain evidence to bolster a case where it is possible that a request for extradition will be made.

Source: UNODC. 2010. Trafficking in Persons and Smuggling of Migrants: Guidelines on International Cooperation



Challenges to International Cooperation

- Lack of trust.
- Diversity of legal systems.
- Diversity of law enforcement structures.
- Misuse of or failure to use existing channels of international communication.
- Non-existent or poorly established direct channels of communication between countries
- Diversity in approaches and priorities.
- Linguistic and cultural challenges
- Resource-intensity of operations

Source: UNODC. 2010. *Basic training manual on investigating and prosecuting the smuggling of migrants*. UNODC, Vienna.



How can International Cooperation be improved?

- Establishing a central authority or other official mechanism that allows the requests to be transmitted and carried out.
- Clear processes should be developed to prioritize and execute MLAs in a timely manner
- Case management systems should be used to keep track of MLA requests.
- Ensuring MLAs are allowed under legal basis
- Eliminating unreasonable restrictions against MLAs.
- Maintaining confidentiality to protect the integrity of the inquiry or investigation.



Domestic Cooperation

- Limited national cooperation can result in a disjointed approach, duplication of efforts and inefficient use of resources.
- Multiple agencies should unite in a single, comprehensive response.
- An inter-agency coordinating body dedicated to SOM can assist policy and operational coordination.
- National approaches should be consistent with other related national, regional and international policies and approaches.



Domestic Cooperation Mechanisms

- Effective national coordination body that coordinates policy, operational and strategic methods to facilitate inter-agency cooperation.
- Information and intelligence sharing systems to target SOM offenders and networks.
- Partnerships between financial institutions, law enforcement and FIU to trace money flows, detect and investigate smugglers.
- Dedicated inter-agency teams/task force/unit to investigate and prosecute SOM offences.



Mechanisms for Domestic Cooperation should allow:



Information exchange



Strategic planning



Division of responsibility



Sustainability of results



Key Stakeholders in Domestic Cooperation:



Government agencies



Non-profit organisations



Service providers



Private sector



Improving Domestic Cooperation

- High levels of cooperation between competent authorities, policy makers and private and public sectors is important. (1)
- Focused collaboration with institutions that are used by migrants and smugglers; credit/payment institutions, and MVTs.
- Regular training of SOM investigative and criminal prosecution teams/units/task forces. (3)
- Development of national Guidelines for all involved agencies on best practices related to anti-SOM measures.

Sources:

(1) UNODC. 2011. *International Framework for Action To Implement the Smuggling of Migrants Protocol*. UNODC, Vienna.

(2) *Ibid*

(3) FATF (2022). *ML/TF Risks Arising from Migrant Smuggling*, FATF, Paris, France.



Thank you!



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