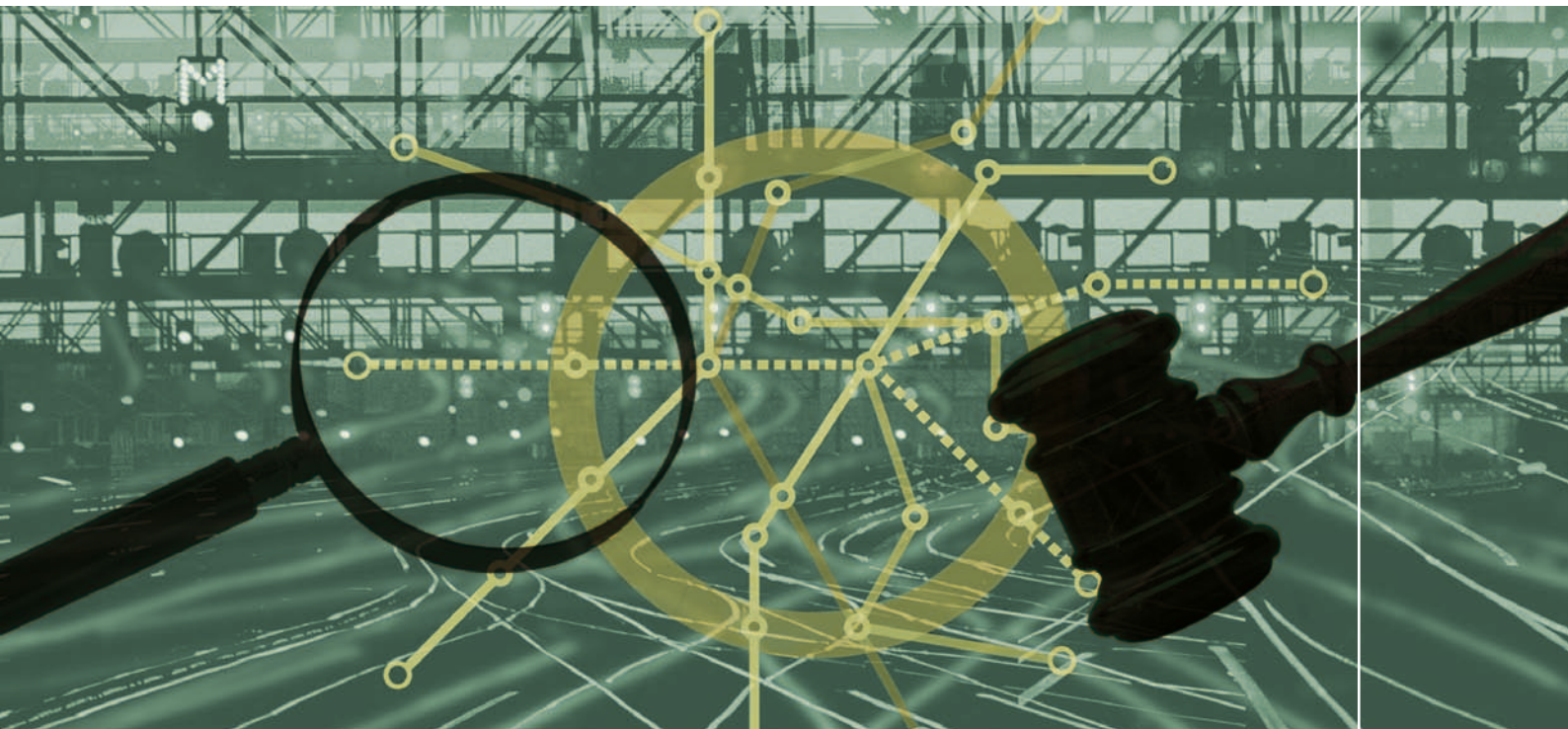




UNODC

United Nations Office on Drugs and Crime



Basic training manual on investigating and prosecuting the smuggling of migrants

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Introduction



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UNITED NATIONS OFFICE ON DRUGS AND CRIME
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Explanatory Notes

EC	European Commission
ECOWAS	Economic Community of West African States
EU	European Union
Europol	European Police Office
INTERPOL	International Criminal Police Organization
IOM	International Organization for Migration
OCRIEST	Central Office for the Repression of Illegal Immigration and Employment of Foreigners without Residence Permits
UNHCR	Office of the United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
1951 Convention	Convention relating to the Status of Refugees
1967 Protocol	1967 Protocol relating to the Status of Refugees

Introduction

“Fifty-four . . . migrants have been found dead after suffocating in a lorry smuggling them . . .”

“More than 100 people were packed into a container measuring 6m by 2m. Many of the survivors are seriously ill from dehydration and lack of oxygen.

“The driver opened the doors of the vehicle after the migrants banged on the walls—but he fled on foot when he saw what had happened.

. . .

“ . . . [Survivors] said they tried to bang on the walls of the container to tell the driver they were dying, but he told them to shut up as police would hear them when they crossed through checkpoints . . .

“ . . . A 30-year-old survivor told . . . how he believed everyone would perish in the lorry.

“I thought everyone was going to die. I thought I was going to die. If the truck had driven for 30 minutes more, I would have died for sure. . . .”¹

Migration is one of the great driving forces of human progress and development. The movement of people around the globe has contributed many stories to the shared history of humanity. People have moved all over the world for a variety of reasons: for example, to increase their economic opportunities, to provide their children with an education, to found a family, to embark on an adventure or to seek protection. In turn, migration has led to the proliferation of languages, cultures, cuisines and ideas throughout the world. Global migration today is one of the great by-products of globalization, and yet the exploitation of it by profit-seeking criminals represents a darker side of the phenomenon.

A. The smuggling of migrants is a deadly business

Not all persons who migrate have the legal opportunities to do so. Profit-seeking criminals take advantage of this and smuggle migrants. Virtually every country in the world is affected by the smuggling of migrants, as a country of origin, transit, destination or all three. Smuggled migrants may be refugees. Smuggled migrants may become victims of crime during the smuggling process or as a result of the smuggling process. Their consent to be smuggled does not mean that they have necessarily consented to the treatment they received throughout the process. Smuggled migrants are vulnerable to exploitation and their lives are often put at risk: thousands of smuggled migrants have suffocated in containers, perished in deserts or drowned at sea. Smugglers of migrants often conduct their activities with little or no regard for the lives of the people whose hardship

¹BBC “Burma migrants suffocate in lorry,” 10 April 2008. Available from <http://news.bbc.co.uk/2/hi/asia-pacific/7339939.stm>.

has created a demand for smuggling services. Survivors have told harrowing tales of their ordeal: people crammed into windowless storage spaces, forced to sit still in urine, seawater, faeces or vomit, deprived of food and water, while others around them die and their bodies are discarded at sea or on the roadside. The smuggling of migrants and the activities related to it generate enormous profits for the criminals involved and fuel corruption and organized crime. Smuggling of migrants is a deadly business.

B. Importance of increasing the focus of law enforcement efforts on investigating and prosecuting smuggling networks

The information currently available is too scattered and incomplete to paint an accurate picture of the number of people who are smuggled each year and the routes and methods used by those who smuggle them. However, the evidence available reveals the following trends and patterns:

- Criminals are increasingly providing smuggling services to irregular migrants to evade national border controls, migration regulations and visa requirements. Most irregular migrants resort to the assistance of profit-seeking smugglers. As border controls are improved, migrants are deterred from attempting to cross borders illegally on their own and are diverted into the hands of smugglers.
- The smuggling of migrants is a highly profitable business in which criminals are at low risk of detection and punishment. As a result, the crime is becoming increasingly attractive to criminals. Smugglers of migrants are becoming more and more organized, establishing professional networks that transcend borders and regions.
- Smugglers of migrants constantly change routes and methods in response to changed circumstances, often at the expense of the safety of the smuggled migrants.
- Thousands of people have lost their lives as a result of the indifferent or even deliberate actions of smugglers of migrants.

These factors highlight the need for responses to combat the crime of the smuggling of migrants to be coordinated across and between regions. They also highlight the need to complement border controls by increasing the focus of law enforcement efforts on the investigation and prosecution of smuggling networks so as to dismantle criminal organizations and change the conditions in which they can flourish.

C. Addressing the smuggling of migrants needs a comprehensive approach

The United Nations Office on Drugs and Crime (UNODC) is aware of the fact that law enforcement measures alone cannot prevent the smuggling of migrants. If they are not part of a holistic approach, increased border controls may simply have the result of diverting migrant smuggling routes and of increasing the demand for more risky services. Where migrants are simply returned to their countries of nationality or residence without consideration for the underlying root causes that made them migrate, they may simply attempt to migrate again, perhaps under more dangerous conditions. There are important push-and-pull factors that influence a person to become a smuggled migrant. All of them must be addressed in a comprehensive way, based on a

multidimensional partnership, which has to involve States, civil society, academia, the media, state institutions and international organizations.

The primary goal of UNODC as the guardian of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children² and the Protocol against the Smuggling of Migrants by Land, Sea and Air,³ both supplementing the United Nations Convention against Transnational Organized Crime,⁴ with respect to combating the smuggling of migrants is to promote global adherence to the Smuggling of Migrants Protocol and to assist States in their efforts to implement it effectively. As outlined in article 2:

“The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among States Parties to that end, while protecting the rights of smuggled migrants.”

D. About the *manual*

Against the backdrop of the Smuggling of Migrants Protocol, and as part of a larger, comprehensive response, UNODC launched a process in 2008 to elaborate basic training modules on preventing and combating the smuggling of migrants. The process was undertaken in cooperation with the International Criminal Police Organization (INTERPOL), the European Police Office (Europol) and the United Kingdom Serious Organised Crime Agency (SOCA) and, most importantly, with the active participation of experienced practitioners working all over the world to investigate and prosecute those who smuggle migrants. Three working meetings were organized in Egypt, Nigeria and Senegal involving investigators and prosecutors from 30 countries, including both common- and civil-law countries.

The present *manual* is the result of this process.

It covers the following thematic areas:

- *Concepts and categories of the smuggling of migrants and related conduct*, focusing on definitions and the constituent elements of the offence of the smuggling of migrants and related conduct and main categories of *modi operandi* of smuggling of migrants.
- *Role of smuggled migrants and smugglers of migrants in investigations*, focusing on debriefing smuggled migrants; protecting smuggled migrants as witnesses of crime; understanding the limitations of smuggled migrants' role as witnesses; recognizing the challenges in seeking the cooperation of smugglers of migrants and smuggled migrants; and alternative sources of evidence.
- *Investigative approaches*: points of entry for investigation; proactive and reactive investigation techniques; and disruptive techniques.
- *Financial investigation*: parallel financial investigations; financial investigations in the pre-arrest phase; seizure of assets and confiscation of proceeds of crime; and the role of financial investigations in investigating the smuggling of migrants generally.
- *Covert investigative techniques*: use of informants; controlled delivery; and surveillance and undercover operations.

²United Nations, *Treaty Series*, vol. 2237, No. 39574.

³*Ibid.*, vol. 2241, No. 39574.

⁴*Ibid.*, vol. 2225, No. 39574.

- *Intelligence*: types of strategic and tactical intelligence necessary to combat smuggling of migrants; and improving the gathering, analysis, use and sharing of information.
- *Legislative issues*: regulatory and legislative background relevant when investigating and prosecuting; alternative offences that can be used to prosecute smugglers of migrants in the absence of specific legislation; and rights of migrants.
- *International cooperation*: international cooperation through informal cooperation mechanisms; international cooperation through formal mechanisms (mutual legal assistance); establishing joint investigation teams; and inter-agency cooperation.
- *Human rights*: human rights that are relevant in investigating and prosecuting the smuggling of migrants, in particular the human rights of smuggled migrants and the rights of suspected smugglers of migrants; principles relating to the protection of refugees; and the role of law enforcers and prosecutors in protecting and promoting human rights.

The modules are complemented by an example of a witness statement (annex I), some basic considerations to be taken into account at the start of an investigation into the smuggling of migrants (annex II on planning and strategizing) and a glossary.

The purpose of this *manual* is threefold. First, it has been designed to be a reference tool for self-study that provides a basic introduction to the subject of investigating and prosecuting the smuggling of migrants. Secondly, it was conceptualized for use in training investigators and prosecutors in preventing and combating the smuggling of migrants. Since there is no “one size fits all” solution to building capacity to investigate and prosecute the smuggling of migrants, the third objective of UNODC in elaborating this basic training manual is to provide a solid basis of knowledge that can be adapted to a country’s specific context. The *Manual* has been designed in such a way that individual modules can be adapted to the needs of different regions and countries and can serve as the basis for upgrading or supplementing the training programmes of national training institutes. UNODC stands ready to assist national institutions in this adaptation process.

The *manual* is the result of a highly active and successful cooperative effort. The *Manual* could not have been developed without the dedication and commitment of all those who shared their knowledge and experiences throughout this process.

It is hoped that the improvement of the *manual* will take place in the same spirit of collaboration. To that end, UNODC would appreciate receiving any suggestions that readers might have for future versions of the *Manual*. Relevant material, case studies, information on best practices and general or specific suggestions may be sent by e-mail to UNODC at ahtmsu@unodc.org.



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