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**Smuggling of migrants by air and its facilitation
through document fraud**

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Background paper prepared by the Secretariat

I. Introduction

1. The present background paper was prepared by the Secretariat to facilitate discussion of the Working Group on the Smuggling of Migrants at its sixth meeting. It sets out a series of issues that the Working Group may wish to address in the course of its deliberations; provides background information and policy considerations on the smuggling of migrants by air and its facilitation through document fraud; provides an overview of the key provisions of the Protocol against the Smuggling of Migrants by Land, Sea and Air and the United Nations Convention against Transnational Organized Crime, as well as of the previous work of the Working Group on related matters. It also lists specific references, resources and tools that States may use to further develop responses to the smuggling of migrants.

II. Issues for discussion

2. The Working Group on the Smuggling of Migrants may wish to discuss the following issues in its deliberations on migrant smuggling by air and its facilitation through document fraud:

(a) What are the current routes and methods used in migrant smuggling by air? What trends can be discerned?

(b) What are the profiles of migrants smuggled by air? What are the profiles of the criminals who engage in migrant smuggling by air?

(c) What is the estimated extent of migrant smuggling by air? How many smuggled migrants have been detected at airports in recent years? How many persons are believed to pass through air borders undetected? What methods are used to estimate the extent of migrant smuggling by air?

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(d) What forms of document abuse (including counterfeit documents, forged documents, fraudulently obtained genuine documents and fraudulent use of genuine documents) have been encountered in the context of migrant smuggling by air?

(e) What are good practices to prevent and combat document abuse, in particular as it relates to the fraudulent use of genuine documents and genuine documents obtained on fraudulent grounds?

(f) What measures have been taken to strengthen airport security and reduce migrant smuggling through airports and their transit zones?

(g) What are good practices to prevent and combat corruption in the context of migrant smuggling by air?

(h) What are good practices in investigating and prosecuting migrant smuggling by air, in particular with regard to those who organize and profit from smuggling and to the seizure of proceeds of such crime?

(i) What specialization exists in law enforcement for preventing and combating migrant smuggling by air?

(j) What examples can be cited of joint investigations into migrant smuggling by air? What specific factors have contributed to the success of joint investigations?

(k) What specific challenges have been addressed in investigating, prosecuting and convicting those who organize and profit from migrant smuggling by air?

(l) What measures are in place to ensure the protection of rights of smuggled migrants in line with international human rights, as well as humanitarian and refugee standards and obligations? What measures are in place to ensure compliance with the principle of non-refoulement?

III. Overview of issues and guidance for response

A. Smuggling of migrants by air and its facilitation through document fraud

3. The smuggling of migrants by air refers to a specific transportation mode, usually involving commercial airlines, which is used to smuggle migrants close to or directly into a country of destination. The use of fraudulent documents and corruption play an important role in migrant smuggling by air, since formal procedures associated with air travel require the possession of travel and identity documents at check-in and immigration controls at both embarkation and destination points.

4. Global data about the smuggling of migrants by air, as well as the smuggling of migrants in general, are limited. The available information is uneven and sometimes outdated in the face of relatively fast-changing routes used to smuggle migrants by air. Making general characterizations about migrant smuggling by air should be avoided, because it runs the risk of oversimplifying its complexity and diversity. Nevertheless, some principal features of migrant smuggling by air are described in the following sections. These features are drawn from information from the following sources:

(a) *Global Study on Smuggling of Migrants 2018*, published by the United Nations Office on Drugs and Crime (UNODC) in 2018;

(b) *Migrant Smuggling in Asia and the Pacific: Current Trends and Related Challenges*, a UNODC research publication, first published in 2015, with a supplementary volume issued in 2018.

1. Factors that influence smuggling methods and routes

5. The inability to access legal channels for migration is a key factor that fuels all migrant smuggling. Decisions about the methods and routes used for a specific migrant smuggling operation depend on various factors. Geography, distance, the availability of public and private means of transportation, border controls, visa requirements and migration policies in transit and destination countries are key determinants that also influence other factors, such as the need to resort to fraudulent documents and/or corruption. Equally important are a smuggler's ability to access and use information that is useful for their operations, as well as their connections across countries with other smugglers and networks. Migrant access to knowledge and networks also play a significant role, as do historical and cultural ties between countries of origin and destination, established flows of migration, previous migration by relatives and friends, and diaspora communities. Migrants also need to be able to afford a needed smuggling service, which turns their purchasing power into another key factor that determines routes and methods.

6. Smuggling by air is generally perceived as a safer mode of travel, offering high chances of success and low risk of detection. However, it tends to be more expensive than other smuggling methods. The costs associated with the production and acquisition of fraudulent documents, the costs for airfares and the demand for fast and effective smuggling methods explain the high fees charged by smugglers for smuggling by air. Nonetheless, the smuggling of migrants by air is not always an option, even for those who can afford it, as they must often receive extensive coaching and are instructed on how to present themselves and react to predictable situations. Therefore, they need to meet certain requirements, which, for example, families with children often do not.

2. Routes

7. The UNODC *Global Study on Smuggling of Migrants 2018* describes 30 major identified smuggling routes. Analysing the trends across these routes, the *Global Study* shows the volatility of the smuggling routes and the stability of the smuggling hubs. Smugglers tend to quickly adapt to changes if such changes undermine their business model or put it at risk.

8. The *Global Study* shows that many smuggling routes involve more than one method of transportation. Often, a migrant is smuggled through a combination of land, sea and/or air. Routes connecting geographically distant areas, such as South Asia and Europe, often involve at least one passage by air. The routes may then continue by land and/or sea to reach the migrant's final destination. For all routes for which migrant smuggling by air has been documented, the use of fraudulent documents has been reported. Nevertheless, some of the required travel might also be undertaken regularly.

9. Smuggling routes, in particular if transportation by air is involved, can be complex and intricate. For example, the *Global Study* contains a description of one route, which involved nationals of Sri Lanka who were smuggled from India to Kenya and the United Republic of Tanzania on the first leg of their journey. From there, they continued along a route via Istanbul, Turkey and Helsinki to Paris, where they obtained fraudulent British passports. They were then brought to Belgium, from where they boarded a flight bound for Canada.

10. The use of direct air routes to destination countries in Europe has been reported for countries in West Africa. Journeys were organized by smuggling networks that handled all the formalities, including travel documents, visas and flight tickets. Within Africa, air routes were used for smuggling from the Horn of Africa to South Africa. In a survey of nearly 400 migrants who had travelled along that route, airplane travel was reported by 10 per cent. Moreover, migrant smuggling by air has been documented from South Asia via various African airports to Europe, Australia and the United States of America.

11. The use of airports in Latin America has been reported to be part of migrant smuggling routes from the Middle East, Africa and Asia. Migrants either aim to stay in South America or to join the northward flow in order to reach the United States or Canada. The use of air routes has also been reported to form part of irregular migration movements for countries of origin and destination within the Americas. Two predominant broad routes can be discerned. The first is a relatively clear-cut northward route that connects flows from many locations in South and Central America, proceeding through Central America, into Mexico and finally to the United States. The second is a southward route into and within South America. Migrants along these routes travel mostly by land and air, and to a lesser degree by sea.

12. Routes departing from countries in South Asia and South-West Asia ultimately head to Europe, the Gulf countries, Australia and North America. In addition to using land and sea routes, migrant smuggling by air has been documented from countries in South-West Asia to destinations in Europe, either directly from their country of origin or transiting through major airports in Europe, Africa, the Middle East or other parts of Asia.

13. With regard to South Asia, it appears that most migrant smuggling to Europe is carried out by air or in a combination of air and land smuggling. Other air routes from South Asia involve flights to cities in West or North Africa, with onward smuggling by sea along the Western or Central Mediterranean routes into Europe. Some migrants from South Asia are smuggled via Central Asia to Eastern Europe and then on to countries in the European Union. These routes often combine air and land travel.

14. Migrant smuggling by air from countries in South and South-West Asia to North America, primarily the United States but also Canada, has likewise been documented. Countries in South and Central America are sometimes used as transit locations; smuggling of these migrants to the United States and Canada often involves fraudulent documents.

15. Australia has been a significant destination for irregular migrants and refugees from South and South-West Asia. Analysis shows that the journey usually involves smuggling by air from South-West to South-East Asia, sometimes via the Gulf States, and smuggling by land and sea to southern Indonesia, where migrants and refugees board vessels bound for Australia or its offshore territories. The use of fraudulent documents appears to be common along those routes.

16. East and South-East Asia are the regions of origin for migrants who are smuggled to Europe and North America. With regard to smuggling by air from East and South-East Asia to North America, it appears that different nationalities use different smuggling methods. Some arrive with genuine documents and then overstay their visa, which might have been obtained with the help of a smuggler. Some migrants from East and South-East Asia pay smugglers to arrange a sham marriage with a national of Canada or the United States in order to enter those countries. Others may be smuggled by air directly to the United States or via a neighbouring country. Sometimes migrants are smuggled first by air to a Gulf country or to Europe, then onwards to South or Central America. Or they may fly directly to a South America and then head north towards the United States overland.

17. Smuggling from East and South-East Asia to Europe involves a range of different routes and methods. Most commonly, migrants fly as close as possible to their desired destination and are smuggled overland for the remaining stretch. The choice of transit airport is guided by considerations regarding cost and visa requirements for these migrants. In recent years, many migrants have flown to major cities in Eastern Europe with fraudulent travel documents. Smugglers then transport migrants overland, often via the European eastern borders route. Smugglers may provide migrants with forged or altered documents, or genuine documents under false identities, at countries of origin or en route. Sometimes smugglers employ sophisticated techniques; smuggled migrants may be presented as students seeking to study in Europe and travel with academic transcripts, language proficiency certificates and enrolment documents that may be forged.

3. Role of airports

18. According to the *Global Study*, migrant smuggling by air to Europe was less frequent but was likely to become more attractive in the future owing to increased controls along land and sea routes. Migrants are smuggled to a range of major airports in Europe, often using fraudulent documents. In the European Union, most detections of fraudulent documents take place on air routes. Large international transit airports are particularly at risk, but smaller airports with fewer officials, often not adequately trained in document control, may also be targeted.

19. Changes in trends with regard to the selection and the use of departure and arrival airports depend on a variety of factors, such as visa requirements or the proximity to the migrant's desired destination. If smugglers assess that the risk of detection is minimal, departure airports with direct flights to the countries of destinations are used. In this case, smugglers usually rely on forged or fraudulently obtained travel documents and/or corrupt officials at the place of origin and/or destination.

20. However, making use of the so-called "airports of convenience" as transit airports to reach final destinations appears to be more widespread in comparison with using direct flights. The smugglers select transit airports depending on the final destination and migrant citizenship. Smugglers then organize for migrants to fly to a transit airport, and from there onwards to a final destination. The first point of transit may involve a regular crossing, and it is only with the second flight that the migration may become irregular. In such a scheme, legitimate travel documents are used for the first leg of the journey, while a falsified or fraudulently obtained visa is used for the second leg, in the hope that security is less strict because the flight arrives from a trusted origin. A migrant might be asked to deliberately miss the onward flight to the stated destination. At the transit airport, the migrant then meets with a member of the smuggling network. Falsified or fraudulently obtained documents as well as a new ticket and boarding pass are then provided for the onward travel to the intended destination.

21. In the European Union, the use of transit airports to smuggle migrants by air is more common than the use of direct flights. During the first half of 2016, of all cases detected in European airports that involved entry document fraud and citizens of African countries, almost 70 per cent related to flights coming from transit airports. Similarly, most nationals of countries in Asia who were caught with counterfeit passports at airports in the European Union had departed from international airports in Africa or the Middle East. Such transits are preferred to direct flights because smugglers hope for more lenient controls of passengers arriving from these third countries.

4. Quantifying migrant smuggling by air

22. The smuggling of migrants is by nature clandestine. In the context of migrant smuggling, air routes are not always used in an irregular way. They can be used to bring a migrant as close as possible to the desired country of destination, which may then be reached by irregular crossing of land, sea or, once again, air borders. As a consequence, information about the number of migrants who are smuggled and how many of them use air routes remains scattered and will remain incomplete as long as systematic sharing and collection of information, which is based on commonly agreed indicators and definitions, is not achieved.

23. It is realistic to assume that most of the migrants who were detected using fraudulent documents at airports had in fact been smuggled and that many more migrants who were smuggled by air were not detected. Against that backdrop, the following figures provide some indication about the extent of migrant smuggling by air.

24. As reported in the *Global Study on Smuggling of Migrants*, over the last few years, the number of official detections of migrants smuggled by air into the European

Union using false travel documents have ranged from 3,500 to 7,000 per year, with a declining trend since 2013. Passports were the most frequently detected type of fraudulent document (air, land and sea routes combined), followed by visas, identity cards and residence permits. The type of document seemed to vary according to country of issuance and appeared to fluctuate between years. In 2016, about 4,400 people were detected with false travel documents at airports in the European Union. In the same year, fraudulent French passports, Spanish and Italian identity cards and residence permits, and Polish visas were frequently detected. During the 2016 fiscal year, the United States recorded 55,000 irregular entries by citizens of countries in Asia, Africa and the Middle East at its southern border, indicating that making use of a combination of air and land routes to reach North America was an established tactic of smuggling.

5. Document abuse

25. Document abuse in the context of migrant smuggling can involve different methods encompassing the use of counterfeit and forged documents, as well as genuine documents that are fraudulently used or obtained. In the context of migrant smuggling by air, document abuse plays a key role since migrants passing through airports will necessarily face document controls. As a consequence, smuggling by air normally requires a smuggling organization capable of providing migrants with travel documents to pass through border control and/or to bribe officials to let them in.

26. Counterfeit documents are fake documents created to resemble genuine documents. They are made in a number of ways. The identified use of entirely fake documents seems to have become rare.

27. Forged documents are genuine documents that have been fraudulently altered or tampered with. Often the substrate and most of the printing and other security features are genuine, and alterations are attempted only to specific personalization elements such as photographs, dates or names. Tampering may include the removal or addition of information, such as replacing the entire biodata page, or placing fake visa stamps or entry and exit stamps into genuine passports. Passports with counterfeit biodata pages are a very expensive form of falsified document used by migrant smugglers, often costing several thousands of dollars. Passports from countries with visa-free entry to other States are the most sought-after and therefore the most expensive, in particular when they come from a country with a large community of people with same ethnicity as the people wanting to be smuggled. The use of falsified travel documents is increasingly being challenged by the use of machine-readable, electronic passports and sophisticated security features. Although falsifying visas has also become more difficult, visas tend to be easier to falsify than passports; it is therefore likely that falsifying visas will remain a used method. While falsified travel documents tend to be successfully used at departure points, it is more difficult to use such documents to pass through border controls in destination countries.

28. Forgers often work independently as contractors for anyone paying for forged documents, instead of as part of a smuggling group. In some cases, the forged documents are not purchased by smugglers outright; instead, a fee is paid for their use and the documents are returned to be used again. Forged and fraudulently obtained documents can be reused several times after being returned to the country of origin. The same visa, for instance, can be used repeatedly within its date of validity. There have also been situations in which the same passport was used several times to smuggle different people. The quality of forgeries is increasing as is the use of genuine documents.

29. Genuine documents that are fraudulently used are documents that have not been altered but are used by a person other than the true owner of the document. In such cases, the holder of the passport is an impostor who looks like the person in the passport photo and assumes their identity. Such so-called “look-alike” passports are obtained through theft or are sold or rented out by the genuine passport holders. Compared with a falsified passport, using a look-alike passport tends to invert the risk

balance. Officials at departure points are more likely to detect an impostor, while it is often more difficult for officials at the arrival points to identify an impostor. A commonly reported modus operandi is that a smuggled migrant leaves the departure point with his or her genuine passport for a transit country, for which he or she can obtain a genuine visa. In the transit country, the smuggled migrant then switches to being an impostor using a look-alike passport and continues his or her travel to the envisaged destination country.

30. The use of look-alike passports is sometimes combined with passport and boarding pass swapping at airports. Passport and boarding pass swapping involves at least two persons: the smuggled migrant and a facilitator. After the two persons have passed through the check-in and immigration controls, they will meet in a common area of the airport or in its transit zone while already in transit. At that point, the migrant will receive the boarding pass and travel documents of the facilitator. Even with a second passport inspection at the gate, using a forged document or acting as an impostor both tend to be successful methods of deceiving airline staff since they might lack time and training to detect the fraud.

31. There are many methodologies used to fraudulently obtain genuine documents by misleading or corrupting the issuing authority. Examples include a passport that is issued on the basis of a false birth certificate or the use of the look-alike technique when submitting an application for passport renewal.

32. In the context of migrant smuggling by air, fraudulently obtained visas tend to play a key role. The smuggling method relying primarily on visas is commonly referred to as “visa smuggling”. In such a case, the smuggler assists the migrant in obtaining a genuine visa on fraudulent grounds, which means that the reasons put forward to obtain the visa are not true. Migrants who have obtained a valid visa – for example, for a business or leisure trip, or for educational purposes – can pass through border controls with relative ease. Visa smuggling requires planning well in advance of the actual travel date and can combine a variety of methods. Such methods can include the creation of fictitious companies or phantom branches of companies in destination countries, the arrangement of sham conferences or dance groups, or the creation of fake bank accounts to demonstrate the financial means required to obtain a legitimate visa. Visa applications may be supported by counterfeit or forged documents including flight tickets, boarding passes, residence permits, birth certificates, sponsorship letters or other documents. Visas may also be obtained by a proxy. For example, a travel agency may apply for a visa on behalf of the applicant and complete the entire process to obtain a visa. The consular authorities can only rely on the information provided in the application form to deliver the visa. With no interview conducted to cross-check the information at the embassy or consulate, it is difficult to detect fraudulent applications.

33. Document abuse often goes hand in hand with thorough coaching, which means that migrant smugglers provide migrants with detailed cover stories, and train them on how to react in certain situations. The fees charged for migrant smuggling that involves the use of high-quality falsified documents, look-alike documents, or visas obtained on fraudulent grounds tend to be very high, ranging from \$10,000 to \$30,000, or more.

34. The method of document abuse used during a smuggling operation ultimately depends on a variety of factors, including the financial means and motivation of the migrant. Fraudulent documents are often used to get as close as possible to a destination country, with the remaining travel and the final border crossing done clandestinely. An asylum seeker might resort to a migrant smuggler who offers a method that is just good enough to bring him or her into the destination country. Since he or she will apply for asylum, the asylum seeker does not need a high-quality document that would allow him or her to pass undetected through the immigration controls in the country of destination, whereas migrants who do not want to apply for asylum would rather resort to a method that will allow them to pass border controls undetected.

6. Corruption

35. As noted earlier, corruption plays a significant role in migrant smuggling in general, and in migrant smuggling by air more specifically. The *Global Study on Smuggling of Migrants* reports that many smuggling networks engage in systematic corruption at most levels, from petty corruption at individual border control points to grand corruption at higher levels of government. Corrupt practices linked to migrant smuggling have been reported along nearly all the identified routes. Some forms of migrant smuggling are carried out by involving local officers to ensure safe passage and impunity. At airports, immigration officers or airline staff may be paid not to scrutinize travel documents.

36. At more senior levels, smuggling could involve visa-issuing authorities and immigration directors who engage in corrupt practices. Perhaps more frequently, however, corruption comes into play in the issuance of genuine documents without satisfying the legal requirements, or on fraudulent grounds. Smugglers may obtain a falsified birth certificate, for instance, which can then be used to obtain a “genuine” passport. Corruption may also be facilitated by the use of blackmail or intimidation. There have been reports of threats made to the lives of people who have initially refused to be corrupted.

7. Organizational structures

37. There is no typical smuggler or smuggling operation. Migrant smugglers may organize and oversee a long, complicated travel itinerary, a single border crossing close to their place of residence, or anything in between. Moreover, smugglers may be active at the beginning, in the middle of or towards the end of a migration trajectory. Sometimes smugglers offer a range of services, with some clients opting for comprehensive services and others for a limited piece of facilitated movement. Nevertheless, in order to better understand in which organizational context migrant smuggling by air takes place or what type of organizational structures it might generate, the following idealized typology might be useful in making a distinction between the provision of ad hoc migrant smuggling services and pre-organized migrant smuggling. In reality, these types will often overlap and be part of a migrant’s single journey.

38. The provision of ad hoc smuggling services tends to be linked to irregular migration, in which migrants organize their journey themselves with the occasional use of local smugglers. The smuggling process is not pre-organized. Individual migrants travel to a large extent on their own, mostly legally and by public transport, but at a certain stage during their journey, the migrants will enlist the help of smugglers. Such smugglers provide limited small-scale services and usually operate individually, and on an ad hoc basis. The profits of these small-scale smugglers are typically not substantial. Such services do not usually include migrant smuggling by air.

39. Migrant smuggling by air is more likely to occur as part of pre-organized migrant smuggling. In this context, the migrants themselves do not have to conduct negotiations with local smugglers during their journey. Instead, independent but closely interacting migrant smugglers or groups organize the different stages of the migrant smuggling process, carry out negotiations with local service providers and pay them. Local service providers are most often nationals or residents of the transit countries, whereas the stage coordinators and smuggled migrants tend to have the same ethnic background. In this process, which involves a chain of coordinators or brokers, it is unlikely that there will be an individual mastermind controlling the whole process from the country of origin to the destination country. The local service providers and coordinators are usually not part of one organization. Instead, they are part of a flexible and informal network, which works on the principles of the market – in particular, trust and reputation – and is driven by profit. Smugglers with broker and coordinator functions play key roles in this system as they are able to maintain working relationships with these different smuggling actors.

40. Pre-organized migrant smuggling can also involve large and well-organized hierarchical criminal operations with transnational links and the capability of organizing sophisticated smuggling passages that might involve the use of falsified or fraudulently obtained travel documents. Such smuggling is often sold as a package that requires the migrant to travel long distances and to use multiple modes of transportation.

8. Fees and profits

41. The profits of smugglers stem from the fees they charge migrants for their services. The fees are largely determined by the distance of the smuggling trajectory, the number of border crossings, the difficulty of the border crossings, the geographic conditions, the means of transport, the safety of the smuggling methods, the use of fraudulent documents, the risk of detection, the migrant profile, the perceived wealth of the migrant and the need for bribery. In contrast to crossings overland and by sea, migrant smuggling by air is more expensive but in general safer for migrants. As a general rule, long-distance, more sophisticated and faster smuggling operations tend to be expensive. Usually, the higher the price, the higher the probability of a successful smuggling service. At the same time, a steep price does not guarantee a safe and successful smuggling passage, despite the smuggler's promises. The *Global Study on the Smuggling of Migrants* reports fees for air routes that range from around \$15,000 to \$30,000 from South Asia to Europe and from around \$27,000 to \$47,000 from South Asia to the United States.

42. Migrant smugglers might also offer different guarantee schemes. Such guarantees might imply that if the smuggled migrant is detected, he or she will be smuggled again without being charged extra costs. More sophisticated forms of guarantees also involve third parties, who are entrusted with the smuggling fee and only release it to the smuggler either entirely or in instalments in relation to agreed milestones. These guarantees are an important tool to attract further business and also allow smugglers to charge considerably higher fees. The use of guarantee schemes in long-distance smuggling operations also seems to indicate a high level of professionalism as well as high profits and good success rates.

43. Though it is difficult to ascertain the profit margin for migrant smugglers by air, given that it largely depends on the modus operandi used, it is generally considered to be a mode of migrant smuggling from which smugglers derive a high profit margin. Generally, it can be assumed that the profit margin is well above 50 per cent.

44. Some smuggling groups handle financial transactions through informal, hawala-like systems. A smuggler ("broker") in the origin country is given the cash and arranges payment to another smuggler in a transit or destination country.

45. Affordability and purchasing power often determine which destination migrants and their families choose. Those who can afford it will pay high fees to use sophisticated and fast smuggling methods and travel to the desired destinations, while persons who are poorer may only be able to pay for slow and simple smuggling ventures to destinations in close proximity to their place of origin. For many migrants, especially those who are smuggled to faraway destinations, the fees charged create a substantial liability, which usually absorbs much of their assets and savings and often those of their family. In many cases, they borrow money from relatives and friends or from banks, moneylenders or the smugglers. Debts resulting from financing the high fees associated with migrant smuggling by air in combination with the migrants' irregular status in transit and destination countries can increase their vulnerability to exploitation and trafficking in persons.

46. Individuals who facilitate informal financial transactions and moneylenders who assist the smuggling of migrants by financing the fees play a crucial but sometimes overlooked role. Although these groups of persons operate their businesses independently from migrant smuggling, they not only profit from it but are important facilitators, especially if fees are large and smuggling operations require financial

transactions to cover costs and pay the various smugglers involved along routes to long-distance destinations.

B. Policy considerations

47. Migrant smuggling by air can be characterized by the following features:

(a) It is a highly profitable crime with little risk of detection and punishment for organizers;

(b) It usually involves document abuse (including counterfeit documents, forged documents, fraudulently obtained genuine documents and genuine documents that are fraudulently used), with corruption also playing an important role;

(c) While air routes might be used to smuggle migrants directly into a country of destination, migrant smuggling by air is often used in combination with smuggling by land and/or sea to bring a migrant as close as possible to a destination;

(d) Migrant smuggling by air allows great distances to be covered in a short amount of time but actual air routing used by smugglers can be very convoluted, involving various countries and continents;

(e) Migrant smuggling by air is a sophisticated crime. Smugglers tend to be well-informed, well-connected and capable of adapting routes in response to changing conditions;

(f) A smuggled migrant can be any person, including a refugee;

(g) Migrant smuggling by air – and migrant smuggling, in general – is a complex phenomenon that defies a single solution or simplistic ones.

48. The Smuggling of Migrants Protocol is the only internationally agreed legal instrument designed to prevent and combat smuggling of migrants. To address the complexity of migrant smuggling by whatever mode of transportation, it is important that States ratify or accede to the Organized Crime Convention and the Smuggling of Migrants Protocol and implement the corresponding obligations through their domestic law. There are still countries that do not have specific legislation, including offences, relating to migrant smuggling, which means that smugglers can operate with relative impunity. Criminalizing migrant smuggling, in line with the requirements set out in the Protocol, including the defining element of “financial and other material benefit”, is a key prerequisite to effectively addressing migrant smuggling.

49. Strengthening national legislation and the development of comprehensive policies to prevent and combat the smuggling of migrants by land, sea and air must go hand in hand with measures that protect the rights of smuggled migrants and refugees. A reiteration of the importance of providing protection and assistance to smuggled migrants, including through fully respecting the existing requirements of international human rights, humanitarian and refugee law, is contained in the Smuggling of Migrants Protocol (art. 16 and art. 19, para. 1). In particular, article 19, paragraph 1, of the Protocol upholds the principle of non-refoulement. This principle was originally stated in article 33 of the Convention relating to the Status of Refugees, and states the right of a refugee not to be expelled or returned in “any manner whatsoever” to the frontiers of territories where his or her life or freedom would be threatened owing to race, religion, nationality, political opinion or affiliation with a particular social group.

50. Some countries respond to migrant smuggling by tightening immigration controls and reinforcing border control. Nonetheless, as observed in the *Global Study on Smuggling of Migrants*, measures to increase or decrease border control result in increased or decreased risks of detection for smuggled migrants and, if taken alone, typically lead to rapid route displacement rather than changes in the overall number of smuggled migrants. Stricter border control measures often increase the risks for migrants and provide more opportunities for smugglers to profit. Also, in the specific

context of migrant smuggling by air, when supported by genuine documents that are fraudulently used or obtained, border controls on their own do not solve the problem. Therefore, it is important to complement border control efforts with improved collaborative investigation and prosecution responses. Specialist operational functions with high-level investigative and prosecutorial skills are required.

51. Migrant smuggling, in particular migrant smuggling by air, can generate large profits for the criminals involved. In some States, enforcement remains weak and investigations rarely lead to prosecutions and convictions. Other countries focus many of their anti-smuggling efforts on the detection of smuggled migrants but do less to detect and prosecute smugglers, especially the organizers and financiers, who are usually not directly involved in bringing migrants across borders. In those circumstances, the smuggling of migrants remains an attractive, low-risk and high-profit crime. Intelligence-led investigative capacities need to be developed and fostered, with the aim of dismantling migrant smuggling networks, bringing smugglers to justice and confiscating the proceeds of crime. As with many criminal activities, the smuggling of migrants is motivated by profit, so cutting financial gains may help to reduce the levels of incidence of this crime. At the same time, it is important to systematically tackle corruption. Corruption at borders and within consular and migration authorities is one of the enablers of migrant smuggling by land, sea and air. Combating the smuggling of migrants can only be successful if anti-corruption mechanisms and measures are enforced.

52. The tackling of smuggling networks in their entirety requires a transnational approach by law enforcement, judicial authorities and policymakers. Improved cooperation at the regional and global levels are also prerequisites to investigate and prosecute smugglers of migrants, explore and analyse the trends and characteristics of this crime, and develop policies and laws to address the many facets of this phenomenon. On their own, national or even bilateral responses to migrant smuggling are only likely to result in the displacement of smuggling routes to other countries. There is thus a critical need for strengthened regional and international cooperation involving origin, transit and destination countries.

53. A holistic approach to countering the smuggling of migrants needs to take into account not only the geography of the crime, but also its different contributing factors. The crime of the smuggling of migrants is determined by a mix of demand and supply elements and requires a comprehensive strategy that takes into account the complexity of these factors. Therefore, it is important to further increase knowledge to inform evidence-based policies and measures aimed at preventing and combating the smuggling of migrants. The ability to make succinct observations and draw meaningful conclusions about the smuggling of migrants is hampered by the fact that many facets of migrant smuggling remain poorly documented and underresearched, with a corresponding gap in analytical material.

54. Socioeconomic conditions, insecurity and environmental disasters often drive large migration movements. The demand for migrant smuggling largely stems from limited opportunities for legal migration and proactive recruitment and misinformation by smugglers. The Smuggling of Migrants Protocol explicitly calls on States parties to promote or strengthen, as appropriate, development programmes and cooperation at the national, regional and international levels, taking into account the socioeconomic realities of migration and paying special attention to economically and socially depressed areas, in order to combat the root socioeconomic causes of the smuggling of migrants, such as poverty and underdevelopment.

55. Limiting the demand for migrant smuggling can be achieved by broadening the possibilities for regular migration and increasing the accessibility of regular travel documents and procedures. Making regular migration opportunities more accessible in origin countries and refugee camps, including the expansion of migration and asylum bureaux in origin areas, would reduce opportunities for smugglers.

IV. Guidance for response

56. The criminalization requirements of the Smuggling of Migrants Protocol and the Organized Crime Convention, in particular the inclusion of “financial and other material benefit” as a constituent element of migrant smuggling, have been detailed in previous background papers prepared by the Secretariat (see [CTOC/COP/WG.7/2017/3](#), [CTOC/COP/WG.7/2017/4](#) and [CTOC/COP/WG.7/2018/2](#)). The following provisions of the Smuggling of Migrants Protocol are key to the subject matter of the present paper:

- (a) Criminalization of migrant smuggling in accordance with the definition contained in the Smuggling of Migrants Protocol (art. 3; art. 4; and art. 6, para. 1 (a));
- (b) Criminalization of offences in relation to travel or identity documents (art. 6, para. 1 (b));
- (c) Criminalization of enabling the stay of smuggled migrants (art. 6, para. 1 (c));
- (d) Criminalization of attempting, participating as an accomplice and organizing and directing other persons to commit migrant smuggling or related offences (art. 6, para. 2);
- (e) Non-criminalization of migrants for having been smuggled (art. 5, in accordance with art. 6, para. 4).

57. General protection and assistance requirements have been extensively detailed in a previous note by the Secretariat ([CTOC/COP/WG.7/2012/3](#)). Key provisions of the Smuggling of Migrants Protocol that are particularly relevant to migrant smuggling by air include the following:

- (a) Protection of rights of smuggled migrants (arts. 2, 4 and 16);
- (b) Non-discrimination of smuggled migrants (art. 19, para. 2);
- (c) Non-interference of the Smuggling of Migrants Protocol with other rights, obligations and responsibilities of States and individuals under international law including human rights, humanitarian and refugee law, including non-refoulement (art. 19, para. 1);
- (d) Compliance with the Vienna Convention on Consular Relations where smuggled migrants are detained (art. 16, para. 5).

58. Issues pertaining to border management, document integrity, investigation and prosecution of migrant smuggling were outlined in detail in previous notes prepared by the Secretariat.¹ Key provisions in the Smuggling of Migrants Protocol and the

¹ Note by the Secretariat on challenges and good practices in the criminalization, investigation and prosecution of the smuggling of migrants ([CTOC/COP/WG.7/2012/2](#)). Note by the Secretariat on challenges and good practices in the prevention of the smuggling of migrants ([CTOC/COP/WG.7/2012/4](#)), which also covers the issues of border controls and document integrity. Background paper by the Secretariat on good practices in the establishment of multi-agency centres ([CTOC/COP/WG.7/2013/3](#)). Background paper by the Secretariat on good practices in special investigative techniques ([CTOC/COP/WG.7/2013/2](#)). Background paper prepared by the Secretariat on the use of the United Nations Convention against Transnational Organized Crime to address challenges relating to the smuggling of migrants ([CTOC/COP/WG.7/2017/3](#)), which also covers issues such as special investigative techniques in smuggling of migrants cases as well as the protection of witnesses and the provision of protection and assistance to victims of crimes. Background paper prepared by the Secretariat on criminal justice responses, including international cooperation, in investigations and prosecutions of perpetrators of migrant smuggling operations ([CTOC/COP/WG.7/2018/2](#)), which also covers issues such as multidisciplinary coordination mechanisms and debriefing and interviewing smuggled migrants.

Organized Crime Convention that are particularly relevant to migrant smuggling by air include the following:

- (a) Border controls to prevent and detect migrant smuggling (art. 11, para. 1, of the Protocol);
- (b) Prevention of transport operated by commercial carriers from being used to smuggle migrants (art. 11, paras. 2–4, of the Protocol);
- (c) Implementation and strengthening of security and control of documents to prevent migrant smuggling (art. 12 of the Protocol);
- (d) Verification of legitimacy and validity of documents at the request of another State (art. 13 of the Protocol);
- (e) Provision and strengthening of specialized training regarding migrant smuggling (art. 14, paras. 1 and 2, of the Protocol);
- (f) Liability of legal persons (art. 10 of the Convention);
- (g) Establishment of jurisdiction over migrant smuggling (art. 15 of the Convention);
- (h) Measures to enhance cooperation of migrant smugglers with law enforcement authorities (art. 26 of the Convention);
- (i) Criminalization of participation in an organized criminal group (art. 5 of the Convention);
- (j) Special investigative techniques (art. 20 of the Convention).

59. Issues pertaining to financial investigations, the confiscation and seizure of assets and proceeds of migrant smuggling, as well as integrity, corruption and obstruction of justice, were outlined in significant detail in previous background notes prepared by the Secretariat ([CTOC/COP/WG.7/2015/4](#) and [CTOC/COP/WG.7/2017/3](#)). Key provisions in the Smuggling of Migrants Protocol and the Organized Crime Convention that are particularly relevant to migrant smuggling by air include the following:

- (a) Criminalization of the laundering of proceeds of crime (art. 6 of the Organized Crime Convention);
- (b) Criminalization of and measures against corruption (arts. 8 and 9 of the Organized Crime Convention and the United Nations Convention against Corruption);
- (c) Criminalization of obstruction of justice (art. 23 of the Organized Crime Convention);
- (d) Confiscation and seizure of assets and proceeds of crime (arts. 12–14 of the Organized Crime Convention).

60. Issues pertaining to international cooperation in criminal justice matters were outlined in detail in previous background notes prepared by the Secretariat ([CTOC/COP/WG.7/2012/5](#), [CTOC/COP/WG.7/2013/4](#), [CTOC/COP/WG.7/2017/3](#) and [CTOC/COP/WG.7/2018/2](#)). The issue of information-sharing on the smuggling of migrants as a form of transnational organized crime, consistent with article 10 of the Smuggling of Migrants Protocol and article 28 of the Organized Crime Convention is discussed in the present background paper, which was prepared for the sixth meeting of the Working Group. Key provisions in the Smuggling of Migrants Protocol and the Organized Crime Convention, which are particularly relevant to migrant smuggling by air include the following:

- (a) Information exchange (art. 10 of the Protocol and art. 27 of the Convention);
- (b) Border cooperation (art. 11, para. 6, of the Protocol);
- (c) Law enforcement cooperation (art. 27 of the Convention);

- (d) Joint investigations (art. 19 of the Convention);
- (e) International cooperation for purposes of confiscation (art. 13 of the Convention);
- (f) International cooperation for purposes of disposal of confiscated proceeds of crime or property (art. 14 of the Convention);
- (g) Extradition (art. 16 of the Convention);
- (h) Mutual legal assistance (art. 18 of the Convention);
- (i) Transfer of sentenced persons (art. 17 of the Convention);
- (j) Cooperation in training (art. 14, paras. 2 and 3, of the Protocol and art. 29 of the Convention);
- (k) Technical assistance cooperation (art. 14, para. 3, of the Protocol and art. 30 of the Convention).

V. Key tools and recommended resources

61. The selected tools and resources listed below are available on the UNODC website. A comprehensive overview of all tools and resources with regard to migrant smuggling is available at www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menu.

Issue paper: migrant smuggling by air

62. This 2010 issue paper explores the particular modus operandi of the smuggling of migrants by air and touches upon the various challenges involved in addressing the issue.

Global Study on Smuggling of Migrants 2018

63. The *Global Study on Smuggling of Migrants 2018* – the first such study from UNODC – shows that migrant smuggling routes affect every part of the world. The study is based on an extensive review of existing data and literature and provides insight into trends, smuggling routes, profiles of smugglers and those smuggled.

Migrant Smuggling in Asia and the Pacific: Current Trends and Challenges 2018

64. This research material updates the UNODC 2015 publication on migrant smuggling in Asia and the Pacific.

Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants

65. This practical UNODC guide and training tool is targeted at criminal justice practitioners around the world. Individual modules are designed to be readily adapted to the needs of different regions and countries and can serve as a basis for upgrading or supplementing the training programmes of national training institutes.

In-depth Training Manual on Investigating and Prosecuting the Smuggling of Migrants

66. This UNODC material builds on the Basic Training Manual to further promote a common understanding of relevant concepts and approaches in response to migrant smuggling. The Manual offers a practical approach to the investigation and prosecution of the smuggling of migrants by providing promising practices relevant to all countries of origin, transit and destination, regardless of their legal system.

Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto

67. The purpose of the *Legislative Guide* is to assist States in implementing the Convention and its Protocols. It can be found under the heading “Legislative guide” on the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC).

International Framework for Action to Implement the Smuggling of Migrants Protocol

68. This publication is a technical assistance tool to help States parties and non-State actors to identify and address gaps in their response to the smuggling of migrants in accordance with international standards. It draws on international instruments, political commitments, guidelines and best practices to propose a comprehensive approach to preventing and combating the smuggling of migrants. Part two of the *International Framework for Action* contains an overview, in the form of four tables, of the following topics: prosecution and investigation; protection and assistance; prevention; and cooperation and coordination.

Issue paper: corruption and the smuggling of migrants

69. This issue paper is aimed at assisting policymakers and practitioners in preventing and addressing corruption related to the smuggling of migrants. It contains a review of the available evidence on the links between corruption and the smuggling of migrants, including the way in which corruption facilitates the smuggling of migrants and undermines efforts to control it. It covers different forms of corruption associated with the smuggling of migrants in both the public and private sectors and contains examples of cases of the smuggling of migrants that involved corruption.

Guide for the Development of Forensic Document Examination Capacity

70. The Guide is intended to be used by officials in both donor and beneficiary countries in their efforts to design, build and strengthen forensic document examination and intelligence dissemination capacities. A corresponding training programme and a guide for trainers are available upon request. In addition, four e-learning tools are available at www.unodc.org/elearning/en/courses/course-catalogue.html#security.
