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**Developments, challenges and best practices in
preventing and combating the smuggling of
migrants by sea**

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Background paper prepared by the Secretariat

I. Introduction

1. The present background paper was prepared by the Secretariat to facilitate the discussions of the Working Group on the Smuggling of Migrants at its tenth meeting. It sets out a series of issues that the Working Group may wish to address in the course of its deliberations and provides background information and policy considerations related to the latest developments, challenges and best practices in preventing and combating the smuggling of migrants by sea. The paper aims to, in particular, draw attention to ongoing issues that affect the lives of migrants and refugees and provide potential guidance on how those issues could be addressed.

II. Issues for discussion

2. Delegations may wish to gather information on national frameworks, practice and challenges related to the following questions, among other issues concerning the smuggling of migrants by sea, to facilitate the deliberations of the Working Group on the Smuggling of Migrants on the topic:

(a) What practical measures do States parties to the United Nations Convention against Transnational Organized Crime undertake to cooperate with one another to address the smuggling of migrants by sea? Do these include measures to address the operational impact of differing legislative approaches to the smuggling of migrants, particularly where the national law of a State is not aligned with the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the Organized Crime Convention, or conflates trafficking in persons with the smuggling of migrants?

* [CTOC/COP/WG.7/2023/1](#).



(b) What specific cooperation and coordination measures or practices exist between coastal and non-coastal States parties to address the smuggling of migrants?

(c) What law enforcement strategies have States parties used to address the use of technology by smugglers to carry out their illicit activities at sea?

(d) What measures have States parties used to trace illicit financial flows derived from the smuggling of migrants at sea?

(e) How do States parties' anti-smuggling legislation, policies and practices uphold the rights of migrants and refugees, particularly at sea? In responding to the smuggling of migrants, what do States parties currently do to ensure the prevention of loss of life at sea of migrants and refugees?

(f) How do States parties currently ensure accountability for infringements of international obligations at sea during counter-smuggling operations?

(g) What measures are in place or have been undertaken to ensure that smuggled migrants and refugees have access to justice and remedies for human rights violations at sea?

(h) What existing legislation, policies and practices at the national level are or can be utilized to facilitate the task of private actors carrying out search and rescue operations at sea involving migrants or refugees in distress or providing assistance?

Previous recommendations of the Working Group on the Smuggling of Migrants on related topics

3. The Working Group on the Smuggling of Migrants has adopted, in its past work, several practical recommendations to combat and prevent the smuggling of migrants at sea.¹ Those recommendations emphasize the importance of prioritizing the preservation of life and safety when detecting vessels used for smuggling migrants, and that seafarers who assist, rescue or assist in the disembarkation of smuggled migrants in distress at sea should not be held criminally liable. Furthermore, the sharing of best practices, procedures and information on detecting and responding to smuggling incidents has been encouraged to facilitate intelligence-based investigations. The Working Group has noted that cooperation, as required under article 7 of the Smuggling of Migrants Protocol and by the international law of the sea, is also key for preventing and suppressing the smuggling of migrants at sea. In accordance with international principles and article 19 of the Protocol, the Working Group has also noted that respect for the rights of smuggled migrants, non-discrimination, non-refoulement and compliance with reporting requirements must be ensured.

III. Overview of issues and guidance for response

4. The smuggling of migrants is a crime that is increasingly becoming of great concern globally. The rise in the number of migrants losing their life at sea in the context of smuggling journeys is worrying. The UNODC *Global Study on Smuggling of Migrants 2018* reports that 58 per cent of migrant fatalities happen at sea.² Migrants and refugees are often put in overcrowded and unseaworthy boats and subjected to aggravated forms of smuggling involving violence, abuse and death. Restrictive migration policies and operational practices to deter irregular migration and, in parallel, the strengthening and proliferation of organized criminal groups that smuggle migrants, have made it particularly challenging for people on the move to reach places where they can be safe, and have consequently put the rights of refugees

¹ All previous recommendations of the Working Group on the Smuggling of Migrants, up to the conclusion of its seventh meeting, can be found in *Smuggling of Migrants: Compendium and Thematic Index of Recommendations, Resolutions and Decisions*.

² *Global Study on Smuggling of Migrants 2018* (United Nations publication, 2018), p. 39.

and migrants at risk.³ In addition, a number of concerns have been reported, including impediments to and delays in the conduct of search and rescue operations at sea, delays in the prompt disembarkation of migrants and refugees, the detention of irregular migrants and asylum seekers, and criminal proceedings against humanitarian actors who provide assistance to refugees and migrants at sea.⁴

5. According to the United Nations Office on Drugs and Crime (UNODC) Observatory on Smuggling of Migrants, the reasons why individuals use the services of smugglers include a lack of alternatives for safe and regular migration, a lack of appropriate travel documents, and a lack of knowledge about alternatives, where they are available.⁵ Where States parties do not take a holistic approach towards the smuggling of migrants, the use of smugglers by migrants and refugees, notably those fleeing war or human rights abuses or moving because of poverty or climate-induced crises, will remain the only option for many.⁶ Furthermore, individuals may turn to engaging in smuggling activities as a coping mechanism in response to harsh socioeconomic situations – a fact that should encourage States to consider and develop economic alternatives for those who might otherwise smuggle people.⁷

IV. Smuggling of migrants at sea: challenges and best practices

Investigation and prosecution of smugglers

6. Migrants and refugees turn to smugglers for multiple reasons that drive them to seek safety and a better life elsewhere, including conflict, persecution and the prospect of a better economic situation. Safe and regular migration channels are often limited and inaccessible for many individuals, leaving them in situations where they feel compelled to move, with little other practical choice but to rely on smugglers. Smuggling networks place people on the move at heightened risk of violence, abuse, exploitation and even death. As discussed by the Working Group on the Smuggling of Migrants in 2021, it is increasingly understood that by limiting the possibilities for regular migration, restrictive policies have instead resulted in an increased demand

³ United Nations Office on Drugs and Crime (UNODC), Education for Justice. Series of university modules on migrant smuggling. Module 5: migrant smuggling in the broader context of migration and its factors; International Criminal Police Organization (INTERPOL), “COVID-19 impact on migrant smuggling and human trafficking”, available at www.interpol.int/en/News-and-Events/News/2020/COVID-19-impact-on-migrant-smuggling-and-human-trafficking; and Mixed Migration Centre, “Human rights in the context of smuggling: perceptions and experiences of migrants in Mali and Niger” (2023).

⁴ See A/HRC/47/30; Office of the United Nations High Commissioner for Human Rights (OHCHR), “‘Lethal disregard’: search and rescue and the protection of migrants in the central Mediterranean Sea” (May, 2021); OHCHR, “Coordinated regional action urged to stop Rohingya deaths at sea: UN expert”, 22 December 2022; European Union Agency for Fundamental Rights, *Asylum and Migration: Progress Achieved and Remaining Challenges – Overview 2015–March 2023* (Luxembourg, Publications Office of the European Union, 2023), pp. 9 ff.; European Union Agency for Fundamental Rights, “June 2022 update: search and rescue (SAR) operations in the Mediterranean and fundamental rights”, 20 June 2022.

⁵ UNODC Observatory on Smuggling of Migrants, “Research findings on migrant smuggling from Nigeria”, September 2022, and “Key findings on the characteristics of migrant smuggling in West Africa, North Africa and the Central Mediterranean”, 20 May 2021.

⁶ *Global Study on Smuggling of Migrants 2018* (United Nations publication, 2018), pp. 6 and 37–38. See also Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, 2023 Adelaide Strategy for Cooperation, para. 7.

⁷ International Organization for Migration (IOM), “El tráfico ilícito de migrantes en América Central y México en el contexto de la COVID-19”, 25 February 2021; Office of the United Nations High Commissioner for Refugees (UNHCR), “Seeking alternatives for Niger’s people smugglers”, 9 August 2017.

for smuggling services.⁸ In a study on the north-west African (Atlantic) route, the UNODC Observatory on Smuggling of Migrants noted that the intensification of border control activities in order to combat the smuggling of migrants had led smuggled people to take longer and riskier routes, with serious implications for the protection of their human rights.⁹ Article 6, paragraph 3, of the Smuggling of Migrants Protocol considers aggravating circumstances to offences relating to the smuggling of migrants as circumstances that endanger, or are likely to endanger, the lives or safety of migrants or that entail inhuman or degrading treatment.

7. The smuggling of migrants by sea entails numerous risks and abuses. Adverse weather conditions, low-quality equipment, the absence of provisions and a lack of navigation skills constitute some of the life-threatening dangers.¹⁰ In some cases, smugglers may go as far as deliberately killing or endangering migrants' lives as part of their modus operandi to sabotage vessels, or instruct migrants on board to do so in order to cause distress at sea and trigger a coastal State's duty to rescue persons in danger once the vessels are in the sea zone of competence of destination countries.¹¹ In other cases, for the purpose of avoiding interception by the authorities, the recklessness of smugglers has also led them to push migrants overboard far away from the shore. Even when the sea is calm, this is a deadly practice for migrants.¹²

8. There are also different opinions and understanding among responding actors as to whether it is migrants or smugglers who are piloting vessels. Where smaller vessels or rubber boats are used, migrants may often be tasked with driving them. Sometimes the captain is chosen from among the migrants by the smugglers, and then instructed on how to drive the boat. Such instruction may last only a couple of hours and be provided not far in advance of the actual journey. Sometimes a person may be selected on the basis of his or her skills, while in other situations a migrant may have no boat skills but claim to so as to be able to travel for free or for a reduced price.¹³ Sometimes the captain is an experienced fisher or seafarer who has been recruited by the smugglers specifically for his or her skills.¹⁴ This is particularly the case on the north-west African route, where those who organize the boat do not usually travel on it but instead recruit one of the migrants to drive it and rely on that person to make the sea crossing. The boat drivers enter into ad hoc agreements for free or discounted passage in exchange for navigating the boat.¹⁵ There have also been situations of minors being used to captain boats.¹⁶ This means that people on vessels arrested on smuggling charges may not be members of organized criminal smuggling groups or, if they are, they are usually low-level criminal actors in these groups. The authorities that encounter smuggling at sea should look beyond the boat and its occupants to uncover the smuggling network behind it.¹⁷ Unfortunately, there is scarce evidence of

⁸ See meeting documentation, including adopted recommendations, of the Working Group's eighth session in 2021. See also UNODC, Education for Justice. Series of university modules on migrant smuggling. Module 5: migrant smuggling in the broader context of migration and its factors; INTERPOL, "COVID-19 impact on migrant smuggling and human trafficking", available at www.interpol.int/en/News-and-Events/News/2020/COVID-19-impact-on-migrant-smuggling-and-human-trafficking.

⁹ UNODC Observatory on Smuggling of Migrants, "Migrant Smuggling from the Northwest African Coast to the Canary Islands (Spain)", July 2022, p. 35; See also *Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response* (United Nations publication, 2021), p. 6.

¹⁰ *Ibid.*, p. 32. See also UNODC Observatory on Smuggling of Migrants, "Key findings on the characteristics of migrant smuggling in West Africa, North Africa and the Central Mediterranean", 20 May 2021, p. 15.

¹¹ *Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response*, p. 40.

¹² *Ibid.*

¹³ UNODC, "Issue paper: smuggling of migrants by sea", 2011, p. 30.

¹⁴ *Ibid.*

¹⁵ UNODC Observatory on Smuggling of Migrants, "Migrant Smuggling from the Northwest African Coast to the Canary Islands (Spain)", July 2022, p. 24.

¹⁶ *Ibid.*

¹⁷ UNODC, "Issue paper: smuggling of migrants by sea", p. 47.

investigations or legal proceedings subsequently being pursued against organizers or higher-level members of smuggling organizations.

9. Increasingly, the modus operandi used by smuggling networks is to not board the boat carrying the migrants.¹⁸ For example, in an Italian case,¹⁹ migrants were smuggled from Egypt in two boats. When they were close enough to Italy, the larger boat was separated from the smaller boat and the defendant and some minors were put in charge of driving the smaller boat in return for being exempted from their smuggling fees. In this case, the defendant was convicted for the aggravated procurement of illegal entry through a transnational organized group for financial or other material benefit (i.e. non-payment of travelling fee), although it was recognized that conspiracy with the organized criminal group could not be proved.²⁰

10. Therefore, it is imperative for authorities, when gathering evidence about smugglers, to investigate the network behind them, bearing in mind that a smuggling network may operate across several countries and continents.²¹ It is also important to link investigations into movements at sea with those into movements by land and air. For example, in coastal countries from which migrants depart, there is an opportunity to actively investigate and intercept the means used to recruit people and the hubs used to gather them together before departure. This is how the organizers can be detected, especially the mid- and high-level smugglers.²²

11. International cooperation, particularly at the operational level along specific migrant smuggling routes, is critical for securing the relevant evidence. Such cooperation includes the sharing of criminal intelligence among countries of origin, transit and destination. Strong political will and long-term commitment is required to successfully achieve this.²³

12. Another challenge relates to the establishment of jurisdiction in the context of incidents involving the smuggling of migrants on the high seas, especially those involving unflagged vessels. With regard to flagged vessels, article 8 of the Smuggling of Migrants Protocol is clear that authorization is required from the flag State to confirm registry, board, search and take appropriate measures against the smuggling of migrants, and to get such cooperation promptly from the designated authority of the flag State. However, with regard to unflagged vessels, article 8, paragraph 1, of the Protocol provides that a State party may request assistance from other State parties to suppress the use of the vessel for smuggling migrants. Since coercive means may be used in such circumstances, ensuring protection of the international human rights of the migrants involved and respect for refugee law is critical.²⁴

13. Another ongoing key challenge in the investigation and prosecution of the smuggling of migrants by sea is the lack of a harmonized understanding of the crime and legal definitions among States. Some countries are yet to incorporate specific legislation against the smuggling of migrants into their domestic legal frameworks.

¹⁸ Ibid., p. 46.

¹⁹ UNODC, Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal, Case law database, Case No. 13/13 Reg. Gen. Corte di Assise di Catania, Italy, 2015.

²⁰ See Proc. Nr 675/2016 R.I.M.C.

²¹ UNODC, "Issue paper: smuggling of migrants by sea", p. 46.

²² Ibid.

²³ *Migrant Smuggling in Asia and the Pacific: Current Trends and Challenges*, vol. 2 (United Nations publication, 2018), pp. 126–127.

²⁴ François Crépeau, Special Rapporteur on the human rights of migrants, and Francisco Carrión Mena, Chair of the United Nations Committee on the Protection of the Rights of Migrant Workers and Members of Their Families, in a statement of 23 October 2015, pointed to the danger of risking the safety of migrants on board and violating the principle of non-refoulement, with reference to Security Council resolution 2240 (2015), which granted exceptional powers to combat migrant smuggling, including using all measures commensurate to the specific circumstances in confronting migrant smugglers or human traffickers. Available at www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16641&LangID=E.

In such cases, smugglers may simply be charged with immigration- or sea-related crimes rather than with serious transnational offences, as provided for in the Smuggling of Migrants Protocol. The lack of harmonized definitions across countries may lead to different operational approaches, or at least decisions in specific instances, being taken. A lack of harmonization between countries of origin, transit and destination may mean that any response cannot easily be coordinated. In order to target high-level smugglers, it is essential to underline the linkages between investigations into movements at sea and those into movements by land and air.²⁵ Related to this, if there are no guaranteed protection systems for witnesses, smuggled migrants might be reluctant to disclose information. Most are also fearful of reporting information because they could be treated as criminals as a result of their irregular status and be deported after the initiation of an investigation.

14. The fees that migrants pay generate significant income and usually depend on the distance to be travelled, the number of border crossings, the geographical conditions, the means of transport, the use of fraudulent travel or identity documents and the risk of detection.²⁶ It is therefore crucial to understand the financial systems behind the smuggling of migrants, and how the profits of this crime are laundered.²⁷ Smugglers use different methods of payment, including advance payment, the “pay-as-you-go” method or transfer of fees upon successful arrival at the destination.²⁸ Migrants mostly pay the smugglers directly in cash or deposit their payment in the bank accounts of natural persons in small amounts that are then quickly withdrawn.²⁹ The criminal proceeds might be invested in real estate, high-value goods and legal businesses in both the country of origin and country of destination.³⁰ Smugglers most often use the hawala banking system to transfer funds from one jurisdiction to another, which causes difficulties for financial investigations.³¹ For these reasons, there have been limited numbers of investigations into the smuggling of migrants that result in money-laundering investigations.³² Greater efforts could be undertaken in most States to target and confiscate the proceeds of smuggling crimes in order to discourage related criminal activity.

15. Smugglers have increasingly made use of social media platforms such as Facebook, Instagram, Telegram, Viber, TikTok and YouTube to advertise their services and connect with potential customers.³³ Smugglers and document fraudsters particularly benefit from the anonymity, availability and variety of clients facilitated by many technology-enabled communication tools, and can hide their real identities to protect themselves from law enforcement action.³⁴ Through these tools, smugglers provide information on migration routes and logistics, and users share their experience of attempts and success stories in their migration journey.³⁵ The European Migrant Smuggling Centre of the European Union Agency for Law Enforcement

²⁵ UNODC, “Issue paper: smuggling of migrants by sea”, p. 45. See also UNODC Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal, Case law database; Global Initiative against Transnational Organized Crime, *Maritime People Smuggling and Its Intersection with Human Trafficking in South and South East Asia: Trends and Issues*, March 2023, pp. 31 ff.

²⁶ *Global Study on Smuggling of Migrants*, p. 5.

²⁷ UNODC, “Issue paper: smuggling of migrants by sea”, p. 30.

²⁸ European Union Agency for Law Enforcement Cooperation (Europol), *European Migrant Smuggling Centre: 6th Annual Report* (Luxembourg, Publications Office of the European Union, 2022), p. 10.

²⁹ Financial Action Task Force, *Money Laundering and Terrorist Financing Risks Arising from Migrant Smuggling*, (Paris, 2022), p. 20.

³⁰ *Ibid.*

³¹ *Ibid.*, p. 21.

³² *Ibid.*, p. 59.

³³ Frontex and Europol, “Digitalisation of migrant smuggling: digital tools and apps enabling facilitation” (July 2021), p. 6.

³⁴ Ioana-Raluca Rusu, “Digital criminalisation and migrant smuggling” (2022), *Int’l J Legal & Soc Ord* 283.

³⁵ Global Initiative against Transnational Organized Crime, *Maritime People Smuggling and Its Intersection with Human Trafficking in South and South East Asia: Trends and Issues*, p. 37.

Cooperation (Europol), together with the European Union Internet Referral Unit within the European Counter Terrorism Centre of Europol, has set up and coordinated referral activity for social media posts and targeted several social media accounts. The referral activities focused on the collection of online content promoting migrant smuggling services and covered social media accounts advertising illicit facilitation and the sale of counterfeit identity documents, passports and visas. The accounts were then referred to online service providers with a request to review them against the terms of service, which resulted in the closure of several accounts.³⁶ Encrypted messaging services are also used by smuggling groups for coordination and communication purposes, which creates investigative and evidential obstacles for law enforcement authorities. Partnerships with technology companies could foster the securing of evidence, for example, through the sharing of Internet Protocol addresses, customer profiles and other personal information in accordance with applicable laws.³⁷

16. In order to strengthen approaches to and strategies in the investigation and prosecution of the smuggling of migrants, authorities should refer to the Organized Crime Convention and the Smuggling of Migrants Protocol, which provide the key international legal framework to address this crime. States should consider fostering cooperation, notably through the exchange of information, the use of existing databases and centralized information on the smuggling of migrants, and witness assistance and protection programmes, in order to gather valuable information for investigations that can target the main organizers of smuggling operations. Joint investigation teams have proved to be effective³⁸ and could investigate the online and financial aspects of the crime. States could also reinforce their cooperation and understanding of the transnational nature of the smuggling of migrants by exchanging liaison magistrates among countries of origin, transit and destination.

Search and rescue

17. The International Organization for Migration has estimated that, from January to the end of June 2023, at least 195 people had died in the Americas by drowning on their journey to reach the north,³⁹ another 151 people had died crossing the Atlantic Ocean to the Canary Islands and the horn of Africa to Yemen,⁴⁰ and 1,849 people had died crossing the Mediterranean Sea in their attempt to reach Europe.⁴¹ Recently, a boat en route from Libya to Italy sank off the coast of Greece, causing the death of 78 people, with hundreds more believed to be missing.⁴² Another recent incident occurred en route to the Canary Islands, with 30 migrants feared dead.⁴³ Similar incidents have also been reported in other regions this year, including a boat travelling

³⁶ Europol, *European Migrant Smuggling Centre: 6th Annual Report*, p. 12.

³⁷ For more information on this subject, see [CTOC/COP/WG.7/2022/2](#).

³⁸ [CTOC/COP/WG.3/2020/2](#); Financial Action Task Force, *Money Laundering and Terrorist Financing Risks Arising from Migrant Smuggling*, p. 35.

³⁹ IOM, “Missing migrants – Americas region”. Available at [https://missingmigrants.iom.int/region/americas?region_incident=All&route=All&year%5B%5D=11681&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=.](https://missingmigrants.iom.int/region/americas?region_incident=All&route=All&year%5B%5D=11681&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=)

⁴⁰ IOM, “Missing migrants – Africa region”. Available at [https://missingmigrants.iom.int/region/africa?region_incident=All&route=All&year%5B%5D=11681&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=.](https://missingmigrants.iom.int/region/africa?region_incident=All&route=All&year%5B%5D=11681&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=)

⁴¹ IOM, “Missing migrants – Mediterranean region”. Available at [https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=All&year%5B%5D=11681&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=.](https://missingmigrants.iom.int/region/mediterranean?region_incident=All&route=All&year%5B%5D=11681&month=All&incident_date%5Bmin%5D=&incident_date%5Bmax%5D=)

⁴² Associated Press, “At least 79 dead after overcrowded migrant vessel sinks off Greece; hundreds may be missing”, June 14, 2023. Available at <https://apnews.com/article/greece-italy-libya-migration-368f1bfd97774bda9c77195>; Helena Smith, “At least 78 people drown as refugee boat sinks off Greece”, *The Guardian*. Available at: <https://www.theguardian.com/world/2023/jun/14/scores-drown-refugee-boat-sinks-off-greece>.

⁴³ Sam Jones and Helena Smith, “At least 35 people feared dead after dinghy sinks en route to Canary Islands”, *The Guardian*, 21 June 2023.

from Madagascar that sank in the Indian Ocean on the way to Mayotte⁴⁴ and a boat that sank in the Caribbean Sea near Saint Kitts and Nevis.⁴⁵

18. According to a UNODC study on aggravated migrant smuggling offences,⁴⁶ deaths at sea may be attributable to, inter alia, the exposure of a large number of migrants to the risks of the high seas over a long period of time; the modus operandi of migrant smugglers, including the use of overcrowded boats in combination with the fact that many migrants do not know how to swim, there is no safety equipment and food and fuel are scarce; and the deliberate killing or endangerment of migrants or the sabotage of vessels by smugglers to cause distress at sea and trigger coastal States' duty of rescue. The study also recognizes how women's lives are endangered differently and more acutely, for example, how they are usually made to sit in the middle of rubber boats for their protection, yet this is also where they are most in danger of being stepped on or suffocated when a boat is in trouble and where seawater and fuel mix to create a dangerous substance that burns the skin.

19. Article 16 of the Smuggling of Migrants Protocol addresses protection and assistance measures, and underscores that each State party must take, consistent with its obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of smuggling, and, in particular, the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Article 9 of the Protocol notes that when States parties take measures against vessels to address the smuggling of migrants, they should ensure the safety and humane treatment of the persons on board. Lastly, article 7 requires States parties to cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

20. In addition to article 19 of the Smuggling of Migrants Protocol, other international law is also applicable. Article 98, paragraph 1, of the United Nations Convention on the Law of the Sea states that every State must require the master of a ship flying its flag to render assistance to any person found at sea in danger of being lost and to proceed with all possible speed to the rescue of persons in distress.⁴⁷ The International Convention on Maritime Search and Rescue considers a distress phase as a situation wherein there is a reasonable certainty that a person, a vessel or other craft is threatened by grave and imminent danger and requires immediate assistance.⁴⁸ The obligation to rescue extends to any person in distress at sea regardless of the nationality or status of such person or the circumstances in which that person is found.⁴⁹ These obligations have been re-emphasized by the International Maritime Organization in its Guidelines on the Treatment of Persons Rescued At Sea, which state that prompt assistance provided by ships at sea is an essential element of global search and rescue services and must therefore remain a top priority for shipmasters, shipping companies and flag States, and that shipmasters should understand and heed obligations under international law to assist persons in distress at sea.⁵⁰ States should

⁴⁴ Associated Press, "Boat carrying migrants from Madagascar sinks; 34 drown", 15 March 2023. Available at: <https://apnews.com/article/migration-migrants-madagascar-mayotte-indian-ocean-1414bac0626537e0726f4a4d28110969>.

⁴⁵ Reuters, "At least 3 dead, 13 missing after boat capsizes near St. Kitts", 28 March 2023. Available at: <https://www.reuters.com/world/americas/least-3-dead-13-missing-after-boat-capsizes-near-st-kitts-2023-03-28/>.

⁴⁶ *Abused and Neglected: A Gender Perspective on Aggravated Migrant Smuggling Offences and Response*.

⁴⁷ United Nations, *Treaty Series*, vol. 1833, No. 31363; entered into force on 16 November 1994.

⁴⁸ United Nations, *Treaty Series*, vol. 1405, No. 23489; adopted on 27 April 1979, entered into force on 22 June 1985.

⁴⁹ International Convention on Maritime Search and Rescue, annex, para. 2.1.10. A similar provision is included in regulation 33 of the International Convention for the Safety of Life at Sea.

⁵⁰ Resolution MSC.167(78), annex 34, paras. 3.1. and 5.1.1.

also coordinate their search and rescue organizations and should, whenever necessary, coordinate their search and rescue operations with those of neighbouring States.⁵¹

21. Everyone rescued at sea must be promptly disembarked in a place of safety, which has been defined as a location where rescue operations are considered to terminate; where the survivors' safety is no longer threatened and where their basic human needs (such as food, shelter and medical needs) can be met; and where transportation arrangements can be made for the survivors' next or final destination, taking into account the particular circumstances of each individual.⁵² A ship should not be considered a place of safety simply because the survivors are no longer in immediate danger once aboard the ship.⁵³ The discussion on the "place of safety" for both refugees and smuggled migrants is relevant to the Smuggling of Migrants Protocol because rescue at sea happens in the context of mixed migration movements, whereby in any given scenario of people rescued at sea, there is a complex migratory population that includes smuggled migrants, refugees and trafficked persons.

22. Disembarkation is a key event to address in responding comprehensively to migrant smuggling. When migrants and refugees are disembarked in a place that is not considered safe, not only do States, depending on the location, risk breaching the principle of non-refoulement, but they should also be aware that opportunities for criminality may be created, including for migrant smugglers and human traffickers. For example, refugees and migrants in such situations may be unlawfully detained and held hostage with ransoms being demanded from their families, and they are vulnerable to other human rights violations and exploitation.

23. The Office of the United Nations High Commissioner for Human Rights, in seeking to identify, document and analyse related human rights violations, has reported instances of failure to provide prompt and effective assistance to boats with migrants in distress in the central Mediterranean Sea, including by State authorities responsible for coordinating search and rescue activities, as well as shipmasters and their flag States.⁵⁴ Cases have also been observed in the Bay of Bengal, with people stranded at sea having reported that naval authorities failed to help them.⁵⁵ In a report to the Human Rights Council in 2021, the Special Rapporteur on the human rights of migrants noted delays in search and rescue responses as well as stated failure to respond to distress calls in instances that cost the life of migrants or put them in a dire situation.⁵⁶

24. The recent agreement of the Association of Southeast Asian Nations (ASEAN) on aeronautical and maritime search and rescue aims to strengthen aeronautical and maritime search and rescue cooperation among the ASEAN member States and contains a strong component on cooperation emphasizing the need to exchange and share search and rescue-related information and experiences.⁵⁷

25. The European Commission has adopted important priority policies and strategic guidelines on search and rescue, notably to reinforce search and rescue cooperation among authorities of States members of the European Union and with other authorities that may be involved in search and rescue activities. All patrols and

⁵¹ International Convention on Maritime Search and Rescue, annex, para. 3.1.1.

⁵² Resolution MSC.167(78), annex 34, para. 6.12. See also "Rescue at sea: a guide to principles and practice as applied to refugees and migrants", jointly published by UNHCR, the International Maritime Organization and the International Chamber of Shipping in 2015.

⁵³ Resolution MSC.167(78), annex 34, para. 6.13.

⁵⁴ OHCHR, "Lethal disregard": search and rescue and the protection of migrants in the central Mediterranean Sea", p. 9.

⁵⁵ OHCHR, "Coordinated regional action urged to stop Rohingya deaths at sea: UN expert", 22 December 2022.

⁵⁶ A/HRC/47/30. There is no internationally agreed definition of pushback, and the Special Rapporteur on the human rights of migrants described what the term meant in the report.

⁵⁷ Legal instruments of the Association of Southeast Asian Nations. Available at: https://agreement.asean.org/search/advance.html?name_of_instrument=&if_status=&id_area_cooperation=&id_document_type=&docs_start=01%2F01%2F2023&docs_end=23%2F06%2F2023&signature_place=&type=docs.

technical assets participating in maritime border surveillance should be properly trained, including on fundamental rights.⁵⁸ The European Commission has also established the European Contact Group on Search and Rescue to enable dialogue on the implementation of the legal framework for and the evolving practice of search and rescue.⁵⁹

26. Safeguards intended to protect fundamental rights have also been put in place in relation to the European Border and Coast Guard Agency (Frontex), and notably include the obligation to hire fundamental rights monitors⁶⁰ whose role is to constantly assess the compliance with fundamental rights of operational activities, provide advice and assistance in that regard, and contribute to the promotion of fundamental rights as part of European integrated border management and to the training activities of the Agency on fundamental rights, including by providing training on fundamental rights.⁶¹

27. States parties should consider training coast guards and other institutions responsible for coordinating and conducting search and rescue at sea on international human rights obligations and standards relevant to the protection of persons at sea.

28. National human rights institutions and ombuds institutions have also played an increasing role in the investigation of violations of rights at borders, as well as the referral of cases to court.⁶²

29. In order to prevent the loss of life at sea and fulfil their international obligations, States should ensure that prompt and effective assistance is provided to all migrants in distress at sea; carry out independent, impartial and thorough investigations into all allegations of failures to assist migrants in distress at sea; fully cooperate and ensure that information on the situation of migrants in distress within the corresponding search and rescue zone is shared with all relevant actors; make sure that those responsible for search and rescue or for providing assistance at sea are properly trained to conduct their work in a human rights-compliant manner; and refrain from facilitating or participating in both pushback and “pullback” operations conducted by other States or non-State actors in violation of the right of migrants to seek protection.⁶³ States could also consider the re-flagging of ships in their national waters in order to prevent and respond to human rights abuses and risks of exploitation.⁶⁴

⁵⁸ European Commission, “Communication from the Commission to the European Parliament and the Council establishing the multiannual strategic policy for European integrated border management”, 14 March 2023.

⁵⁹ European Commission, “Commission Recommendation (EU) 2020/1365 on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities”, 23 September 2020. See also <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupId=3752&fromMeetings=true&meetingId=27635>.

⁶⁰ European Union Agency for Fundamental Rights, *Asylum and Migration: Progress Achieved and Remaining Challenges – Overview 2015–March 2023*, p. 12.

⁶¹ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No. 1052/2013 and (EU) 2016/1624, art. 110.

⁶² European Union Agency for Fundamental Rights, *Asylum and Migration: Progress Achieved and Remaining Challenges – Overview 2015–March 2023*, p. 12. See also Greek National Human Rights Commission, “Recording mechanism of incidents of informal forced returns: interim report – January 2023”; Defensor del Pueblo, “The ombudsman has initiated an action to request information about the shipwreck of a small boat that was heading to the Canary Islands”, 23 June 2023.

⁶³ OHCHR, “‘Lethal disregard’: search and rescue and the protection of migrants in the central Mediterranean Sea”, pp. 12 ff.

⁶⁴ IOM, *Protection of Migrants at Sea* (Bangkok, 2018), p. 27. See also Global Initiative against Transnational Organized Crime, *Maritime People Smuggling and Its Intersection with Human Trafficking in South and South East Asia: Trends and Issues*, p. 41.

Obstacles to and criminalization of the provision of humanitarian assistance to smuggled migrants

30. Article 3 of the Smuggling of Migrants Protocol defines smuggling of migrants as 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. The reference in this definition to “a financial or other material benefit” was included in order to emphasize the intention to include the activities of organized criminal groups acting for profit, but to exclude the activities of those who provide support to migrants for humanitarian reasons or on the basis of close family ties. As noted in the interpretative notes for the negotiation sessions of States, it was not the intention of the Protocol to criminalize the activities of family members or support groups such as religious or non-governmental organizations.⁶⁵ However, in the Progress Declaration of the International Migration Review Forum, published in 2022, United Nations Member States noted that migrants continue to struggle to access and receive humanitarian assistance, including search and rescue efforts and medical care, which creates and exacerbates situations of vulnerability. Limited progress has been made in distinguishing the activities of smuggling networks from the provision of assistance of an exclusively humanitarian nature for migrants along perilous routes and in other situations where their life or safety is in danger. In many cases, the provision of such assistance has been considered unlawful.⁶⁶

31. Non-governmental organizations have been restricted by States in related undertakings and, in some cases, on issues related to States’ border practices, and have also faced deregistration and been subjected to criminal sanctions for carrying out their work.⁶⁷ Migrant advocates and researchers have noted an increasing and impactful trend of humanitarian acts of assistance (such as the provision of room or board, first aid or long-term care, and transportation to avoid, among other things, environmental exposure or exhaustion) being qualified by authorities as smuggling.⁶⁸

32. The European Union Agency for Fundamental Rights recently reported that, while previously civil society vessels had rescued a significant number of migrants in distress at sea, since 2018, they have faced many obstacles in doing so. The Agency reported that since 2016, 60 criminal and administrative proceedings have been initiated against crew members and vessels by national authorities.⁶⁹ The most common issues noted by port authorities included an excessive number of passengers, ship assets not working properly, disproportionate numbers of life jackets on board, and having inadequate sewage systems for the number of potentially rescued people, with those systems causing environmental pollution. The Agency also noted that given criminal and administrative proceedings, vessel seizures and mandatory maintenance work, some of these assets are blocked at ports and thus cannot carry out search and rescue operations. Out of 21 assets, 10 are currently in operation. Of these 10, seven perform search and rescue operations. Four are blocked in ports pending legal proceedings. Seven vessels are currently docked because of other technical reasons.⁷⁰

33. Other trends noted include delays in finding a safe port, with cases of vessels remaining at sea for many days,⁷¹ designating distant ports for disembarkation, preventing multiple rescues in one operation and imposing heavy fines on search and

⁶⁵ Interpretative notes, [A/55/383/Add.1](#), para. 88, *Travaux Préparatoires*.

⁶⁶ [A/RES/76/266](#), para. 33.

⁶⁷ Council of Europe, *Pushed Beyond the Limits: Four Areas for Urgent Action to End Human Rights Violations at Europe’s Borders* (April 2022), p. 36.

⁶⁸ *Abused and Neglected, A Gender Perspective on Aggravated Smuggling Offences and Response*, p. 73.

⁶⁹ European Union Agency for Fundamental Rights “Table 2: Legal proceedings by EU Member States against private entities involved in SAR operations in the Mediterranean Sea (June 2022)”.

⁷⁰ European Union Agency for Fundamental Rights, “June 2022 update”.

⁷¹ European Union Agency for Fundamental Rights “Table 3: Vessels kept at sea for more than 24 hours while waiting for a safe port, January–15 June 2022”.

rescue organizations.⁷² These practices further increase the risk to life faced by migrants and refugees at sea and are at odds with international obligations of prompt disembarkation in a place of safety and the duty to render assistance to persons in distress. States, accordingly, should seek to increase information-sharing and cooperation with actors involved in search and rescue operations, notably non-governmental organizations in locations where search and rescue operations are limited. States should also develop protocols and standard operating procedures for communication, cooperation and coordination at the regional and national levels between authorities, international organizations and non-governmental organizations involved in search and rescue and disembarkation assistance and responding to migrant smuggling. Predictable arrangements for timely disembarkation to a place of safety should also be ensured.⁷³

V. Conclusion

Key areas for action

34. The smuggling of migrants by sea poses significant and distinct challenges for States parties, which must engage in concerted efforts and cooperation at the national, regional and international levels. States may consider some of the following actions⁷⁴ to address this phenomenon:

(a) In order to increase detection of migrant smuggling at sea, ongoing support should be provided to coastal States in the detection of incidents, through joint patrols, patrols by specialized agencies or the provision of technical and human resources, in particular for small island States, to ease the burden of patrolling search and rescue areas;

(b) Domestic legislation should be harmonized with the Smuggling of Migrants Protocol and provisions on the interception of migrant smuggling at sea must be implemented with due regard for international human rights law and international refugee law. All persons involved in interceptions must be equipped to assess and respond to the special needs and vulnerabilities of people on board vessels;

(c) Law enforcement agencies should take every opportunity to investigate the smuggling of migrants at sea, including by identifying perpetrators of smuggling crimes and other crimes committed during smuggling operations at sea that may aggravate the crime and even result in the death of migrants. More appropriate and efficient policy, legal and judicial responses to aggravated smuggling that consider gender-specific vulnerabilities and gender-sensitive consequences of State responses should be developed and implemented;

(d) To strengthen the investigation of land-based smugglers who organize the smuggling of migrants at sea, law enforcement agencies should make use of databases at the national, regional and international levels and strengthen both formal and informal cooperation among countries of origin, transit and destination along common smuggling routes in order to gather the relevant intelligence. States may also consider measures to build confidence and trust with migrants who are rescued and intercepted, in order to gather information about land-based smugglers;

(e) In order to ensure that migrants smuggled at sea are rescued according to the international law of the sea, States should ensure that the duty of rescue is prioritized and address any allegations of failure to rescue at sea and pushbacks;

⁷² OHCHR, “Italy: Proposed new sea rescue law puts more lives at risk – Türk”, 16 February 2023.

⁷³ Resolution MSC.167(78), annex 34. See also “Rescue at sea: a guide to principles and practices as applied to refugees and migrants”; UNODC, “The concept of place of safety under international law and the respect of the rights of migrants and refugees rescued at sea by all States”, press release, 18 May 2022.

⁷⁴ UNODC, “Issue paper: smuggling of migrants by sea”.

(f) To ensure the appropriate disembarkation of smuggled migrants, arrangements should be made for their disembarkation in a place of safety governed by a maritime regime and not by immigration control objectives.

35. The need to reinforce existing search and rescue practice and cooperation is acute given that the cost of failed operations is high – the first quarter of 2023 has been the deadliest since 2017 for migrants crossing the Mediterranean Sea.⁷⁵ Monitoring mechanisms to evaluate the failure of search and rescue operations and human rights violations should be enhanced and actors providing humanitarian assistance should be regarded as part of the response to the smuggling of migrants.⁷⁶

36. Data on smuggling by sea remains scarce⁷⁷ and are mostly based on numbers of arrivals or on the number of migrants apprehended at a border,⁷⁸ despite the increasing recognition by States that data are essential to informing better responses. The Global Compact on Migration, for example, urges countries to use accurate and disaggregated data as a basis for evidence-based migration policies, but gaps still exist.⁷⁹ Therefore, there is need for global efforts to collect relevant data on smuggling of migrants by sea in order to develop more effective policies and practices to prevent this crime.

37. Related to this, collaborative approaches, including information-sharing, joint operations and the harmonization of legal frameworks, can enhance capacity to disrupt smuggling networks and apprehend perpetrators.

38. As the crossing by sea constitutes only one part of the migration continuum, States parties should consider further enhancing regular migration pathways. By providing accessible and well-managed migration channels, individuals are less likely to resort to irregular and dangerous journeys facilitated by smugglers. By acknowledging that incidents of smuggling by sea are most often components of complex and much longer smuggling routes, States parties might seek to build the cooperation and information-sharing needed to address organized criminal networks that perpetuate migrant smuggling with disregard for limited and localized responses.

⁷⁵ United Nations News, “Central Mediterranean: Deadliest first quarter for migrant deaths in six years”, 12 April 2023.

⁷⁶ See also Bali Process, 2023 Adelaide Strategy for Cooperation, para. 7.

⁷⁷ *Global Study on Smuggling of Migrants*, p. 12.

⁷⁸ IOM, *Migrant Smuggling Data and Research: A Global Review of the Emerging Evidence Base* (Geneva, 2016).

⁷⁹ [A/RES/76/266](#), para. 48.