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## COUNTER-SMUGGLING OPERATIONS AND PROTECTION: HOW CAN WE MARRY THE TWO?

by Maegan Hendow

**In this fifth article of the series, we examine smuggling through the prism of protection, highlighting how counter-smuggling operations can better take into account human rights considerations into their approaches.**

Research has already shown that the current extent of migrant smuggling is directly related to large population movements triggered by wars, instability and economic crises, which lead people to search for a better life and protection from harm elsewhere. In the course of this search, migrants may use smugglers' services in order to gain access to a new country, where legal avenues are complex, difficult to access, or closed – as long as there is a demand for smuggling services, there will continue to be a market for it. Smugglers respond to the market's demands, as well as changes in border control and policies, in facilitating irregular border crossings. However, they are – by and large, but with notable exceptions in certain regions such as North Africa – organised in a flexible, horizontal structures linking various “service providers” together, such as recruiters, drivers, forgers, money exchange offices, accommodation providers and others. This makes border enforcement across various states difficult, as one actor can be removed from the chain and replaced without harming the network as a whole. It is within this context then that border control and counter-smuggling operations operate. Walls, sensors, cameras, night vision goggles, patrols – these represent just some of the border management strategies used to combat irregular migration and migrant smuggling at the actual border. However, while the global compact should refer to appropriate actions to protect and assist (smuggled) migrants, we should also consider whether our actions put migrants in harm's way – or push them to use smuggling services that may be dangerous or deceptive.

### **1. Do no harm**

First, states have a duty to ensure that their actions do not harm people. In the course of counter-smuggling operations, states should take this duty into account, and make reference to it in border management and policy-making.

- **Border control:** physical and even electronic barriers at the border are effective in preventing migrants from crossing that specific border area. However, research has demonstrated that such measures are not a preventive technique – they rather push migrants into alternative routes, via other states or other areas of the border that are more dangerous to cross. In this latter case, if migrants have not already made use of smugglers’ services, they may then feel the need to do so.
- **Cyber control:** increasingly and worldwide, states are using electronic surveillance both at the border and online, for border control or counter-terrorism purposes. Migrants increasingly use technology and social media (WhatsApp, Viber, Facebook) during the smuggling process – on the one hand to access smugglers’ services or find a smuggler through word of mouth, and on the other hand as a means to protect themselves. For example, in cases where payment was to be released upon arrival of the migrant to the agreed upon destination, migrants previously would use a text message to their family at home to release the money to smugglers. Nowadays, however, some are using photos at well-known landmarks. This latter example ensures that the family can verify that their family member has not been harmed, and has not been misled as to the destination. Cracking down on smugglers’ advertisements and communication must not then prevent migrants from using the same technology to protect themselves.
- **Prosecution of smugglers:** states need to and already take action to prosecute migrant smugglers. However, often smugglers use migrants as guides or skippers, in order to avoid making the border crossing him- or herself. These migrants agree to lead the group in order to pay a smaller fee for the crossing, and don’t actually obtain any financial gain from the smuggling operation (thus do not fit the definition of a smuggler as defined under the Palermo Protocol). Thus, authorities should take this into account when assessing the person guiding the group, to ensure that he or she has actually orchestrated and benefited from the smuggling operation, rather than having merely participated in it.

## **2. Assess access to protection**

Protection and assistance must not only be considered relevant for victims of trafficking, but also for migrants who have used smuggling services. Human rights considerations are still relevant when smuggled migrants are rescued or intercepted at the border, and smuggled migrants may also have protection claims. As noted at the start of this blog, migrants fleeing wars and instability are included among those using smuggling services. A group of smuggled

migrants entering a country may include someone looking for work, an unaccompanied child, a victim of gender-based violence, someone requiring serious medical treatment and an asylum seeker from country experiencing conflict – or may have a background that includes several of these characteristics. Thus, screening and assessing for potential claims of protection – and triggering the relevant referral mechanisms – is essential upon reception of smuggled (and irregular) migrants. Throughout the process of reception, detention and return of smuggled migrants, states must take a human rights approach. There is already a large body of work outlining policy recommendations and best practices for how states can better ensure the human rights of irregular and smuggled migrants, at all stages of the process: interception, reception, detention and return. The global compact can and should refer to these measures and recommendations in reference to treatment of irregular and smuggled migrants.

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*On 4-5 September 2017, the global compact for migration process continues in Vienna with the thematic session on smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims. UN Member States, intergovernmental organisations, non-governmental organisations and the private sector will gather to collect input and recommendations on these topics, to inform the development of the compact.*

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#### **Recommended Research and Policy documents:**

[International Framework for Action To Implement the Smuggling of Migrants Protocol](#)

[Report of the Special Rapporteur on the human rights of migrants – Regional study: management of the external borders of the EU and its impact on the human rights of migrants](#)

EU Fundamental Rights Agency's triplet reports on fundamental rights at the EU's external borders: [airports](#), [land borders](#) and [sea borders](#).

[A study on smuggling of migrants: Characteristics, responses and cooperation with third countries](#)

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