Irregular Migration
Section 3.12

Topics:
Types of Irregular Migration
The Criminalization of Migrant Smuggling
The Nature of Human Trafficking
Consequences of Trafficking and Policy Responses
Strategies to Counteract Irregular Migration
Irregular Migration

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This Section provides an overview of the range and types of irregular and illegal migration with a focus on the types of irregular migration that pose the most serious challenges to orderly migration management. Topic One provides an overview of irregular and illegal migration, Topic Two focuses on the problem of migrant smuggling, and Topic Three reviews the nature of human trafficking, its causes, incentives, mechanisms and methods. Topic Four identifies the consequences of trafficking for victims, sending countries, and receiving countries and provides a survey of international and national policy considerations and responses that address the problem of trafficking in persons. Topic Five concludes the Section with a review of strategies designed to counteract all forms of irregular migration.

Learning Objectives

• identify the range and types of irregular and illegal migration

• understand the overlap and basic distinctions between types of irregular migration

• understand the nature of migrant smuggling and human trafficking

• identify the range of national and international measures designed to address the problems of migrant smuggling and trafficking in persons and to provide assistance to victims

• understand the importance of national measures that are consistent with international protocols
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- improve your ability to identify gaps in your national legislation regarding irregular migration and develop appropriate policies to remedy them

- improve your ability to work with colleagues and international counterparts to shape national and cross-national actions that can reduce migrant smuggling and human trafficking

Background

Migration is a common and necessary feature of modern life. It is universally acknowledged that migrants have contributed significantly to the development of societies. However, the continuous flow of migrants in an irregular situation, their vulnerability to exploitation, and the association of irregular migration with smuggling and trafficking networks are persistent issues of global concern.

While irregular migration is an area of migration management that concerns governments worldwide, a perspective focused primarily on irregular migration can obscure the broader picture in which properly managed migration can bring benefits both to migrants and societies. A tighter immigration system is part of a legitimate response by States to irregular migration, but the effect may be to push more people into the hands of smugglers and traffickers, thereby increasing vulnerability, if tightening is the only response. Smuggling can and quickly does lead to exploitation and trafficking, and this can undermine security due to links with organized crime, violence, and corruption.

Guiding Questions

1. Has your State signed and ratified the Palermo Convention and its Protocols related to the smuggling of migrants and trafficking in persons?

2. Does your State have specific laws that make migrant smuggling and trafficking in persons crimes, and do these laws approximate the guidelines articulated in the Protocol?

3. Does your government administration investigate irregular migration and prosecute those guilty of offences?

4. Does your State have specific regional and cross-regional cooperation activities to share best practices, jointly solve common problems, and address specific cases related to all forms of
Measures to effectively combat irregular migration combine law enforcement with prevention and education, both within States and internationally. International cooperation should include control measures, training, research, information, and a variety of preventive measures.

It is important to understand the differences between “trafficking in persons” and “smuggling of migrants”. These terms are not interchangeable and both pose serious challenges to contemporary migration management. These forms of irregular migration are being criminalized internationally.

The campaign against irregular migration takes place within a broader context of migration management that can strengthen and focus on protection and human rights efforts for those truly in need, while at the same time expanding efforts to improve legal opportunities for immigration, primarily through regulated labour programmes.
Terms and Concepts

Coercion
The use of physical force or psychological pressure to cause someone to act in a way that is contrary to his or her wishes.

Entrepreneurial irregular migration
A form of migration whereby individual migrants, acting on their own behalf, enter or remain in a country without proper permission. The migrants may or may not be subject to legal sanction.

Exploitation
The use of coercion and misinformation to cause someone to serve the purposes of another in the absence of informed and rational consent. At a minimum, this includes the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs.

Fraudulent document
Any travel or identity document that:
- has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State
- has been improperly issued or obtained through misrepresentation, corruption, duress, or in any other unlawful manner
- is being used by a person other than the rightful holder.

Illegal entry
Crossing borders without complying with the requirements for legal entry into the receiving State.

Irregular migration
Migration that takes place outside the norms and procedures established by States to manage the orderly flow of migrants into, through, and out of their territories.

Migrant smuggling
A form of migrant movement that is facilitated with the agreement of the migrant and usually with payment from the migrant for the smuggling services. Smuggling can be exploitative and dangerous, including fatal, but is not coercive in the sense of trafficking. For the purpose of application of the Palermo Protocol, smuggling requires an organized criminal group in the lead role.
Sex workers
Persons engaged in the exchange of sex services for financial remuneration

Trafficking in persons
The recruitment, transportation, transfer, harbouring, or receipt of persons by means of the threat or use of force or other forms of coercion. Trafficking is often related to the commercial sex industry and violates human rights. It includes abduction, fraud, deception, and the abuse of power or the abuse of someone in a vulnerable position. The giving or receiving of payments or benefits for the purpose of exploitation by obtaining the consent of one person who has control over another person is also a form of trafficking in persons.
Types of Irregular Migration

Irregular migration is migration that occurs outside of the rules and procedures guiding the orderly international movement of people. Irregular migration has several forms, and the distinctions between them, as well as the overlaps, are important for policy makers and practitioners.

A certain level of illegal entry into States is unorganized or “family-based”. For example, a person may attempt to enter the State on the basis of a valid document issued to a family member of similar appearance. In other cases, individuals may initiate other attempts to illegally enter the territory of a State. These dimensions of irregular migration are long-standing and require vigilant inspection of persons at points of entry and familiarity with the methods used by people to covertly enter a State.

Many labour markets in destination countries clearly allow for the absorption of large numbers of migrants in an irregular situation, which acts as a pull factor, notwithstanding governmental migration management measures. The availability of jobs with better wages and of employers willing to hire irregular workers are significant pull factors. When the procurement or retention of this illegal employment is an organized act by a group, it may be considered an act of smuggling under the Smuggling Protocol described below. Regardless of the application of the Smuggling Protocol, such actions are generally in violation of national legal regimens.

Economic, social, trade, labour, cultural, security, and development policy areas must be related to each other in order to effectively address the issue of irregular migration. Partnerships are essential for developing effective policies across these areas that can address irregular migration. Such partnerships would not only allow for legitimate channels of migration but also for return arrangements, which would facilitate the safe and dignified return of unauthorized migrants.

In addition, two major challenges to contemporary migration management are found in the organized large scale smuggling of migrants, and in coercive and exploitative trafficking in human beings. The distinction between “smuggling” and “trafficking” is best captured in the definitions used by the Protocols supplementing the United Nations Convention Against Transnational Organized Crime. These are the definitions that are used in the list of terms found at the beginning of this Section.

The Convention Against Transnational Organized Crime entered into force on 29 September 2003 having received the necessary number of ratifications.

Important Points

1. The number of migrants in an irregular situation has not declined, despite increased spending on enforcement measures in major destination countries. This is because push factors in countries of origin—including poverty, unemployment and crises—and pull factors in countries of destination—including higher wages, job opportunities and safety—have not changed. Furthermore, there are insufficient frameworks and mechanisms to allow regular migration to address the labour shortages of expanding economies. Inadequate or inconsistent development assistance programming limits the development of a capacity to effectively manage migratory flows in transit countries and new destination countries.

2. There are important differences between “trafficking in persons” and “smuggling of migrants”. You will find these terms used incorrectly in many instances. They are not interchangeable.

3. Trafficking may be understood as the exploitation of a victim by means of coercion and the violation of human rights.

4. The Trafficking Protocol expresses a commitment to take effective measures against the problem of trafficking in persons that reflects the international community’s recognition of the problem. It standardizes the terminology, laws, and practices relating to trafficking and requires States to criminalize trafficking and provide assistance and protection to victims in countries of origin, transit, and destination. The Protocol also fosters international cooperation against this crime, through control measures, training, research, information, and other preventive measures.

5. Smuggling is organized illegal international border crossing that is provided in return for a certain payment by the migrant.

6. The Smuggling Protocol calls for the criminalization of migrant smuggling, rather than of migration itself, including irregular migration. The Protocol calls for provision of applicable rights and
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protections to the smuggled migrants, though it makes no case that States should remove or lessen their own penalties toward migrants who use smugglers or who otherwise enter or reside irregularly. The Smuggling Protocol is primarily an anti-crime initiative.

Apply What You Have Learned

1. How important is the distinction between migrant smuggling and trafficking in persons for migration management in your setting?

2. What measures are required (legislative or otherwise) to ensure the employment sector’s positive participation in efforts to reduce irregular migration while at the same time ensuring respect for the rights of migrant workers, whether or not they are legally in the destination country?

3. To what extent is irregular migration into your State unorganized or “family-based”?

4. What partnerships could assist your country in addressing irregular migration?
Topic Two

The Criminalization of Migrant Smuggling

Smuggling of migrants is commonly understood as the intentional organization or facilitation of the movement of persons across international borders, in violation of laws or regulations, for the purpose of financial or other gain to the smuggler. This common-sense description remains conceptually useful and has been made more explicit through the United Nations Convention Against Transnational Organized Crime adopted in November 2000 by the UN General Assembly, and presented for signature in December 2000 in Palermo.

The biggest threat posed by smuggling does not come from the smuggled migrant, or the large numbers of such migrants, but rather from the strengthening of organized crime syndicates and their increased ability to circumvent governance systems. Variations in the classification of a migration offence and in the nature of the penalty are dependent upon particular national approaches to the treatment of malafide migrants, and are not governed by the international Convention or its Smuggling Protocol. Thus, the Palermo Protocol does not spring from anti-immigration or anti-migrant perspectives. It helps to refine a Convention on transnational organized crime, which is an anti-crime initiative.

Important Points

1. The Smuggling Protocol covers not only the procurement of illegal entry but also the procurement of illegal residence. In other words, the facilitation or organization of malafide means for remaining in a country in an unauthorized fashion—no matter how one has entered it—is also considered to be smuggling.

2. The Smuggling Protocol further specifies that attempts at smuggling, even if unsuccessful, are violations. This provision is also found in national laws. The Netherlands, for example, articulates a similar approach in national law, while expanding the concept of violation of border to include the European Union’s Schengen borders.
3 The Smuggling Protocol is only intended to deal with migrant smuggling activities that concern an “organized criminal group”, leaving open the possibility that smaller scale, ad hoc smuggling actions would fall outside its purview. Migrants without proper clearance to enter or remain in a country may choose to attempt entry or unauthorized stay without assistance or facilitation. These “entrepreneurial” violators of migration laws or regulations do not fit the category of smuggled persons and as such do not fall under the strictures of the Palermo Protocol, though they commonly are subject to the same national laws and regulations directed against all irregular migrants, including applicable parts of a State’s Criminal Code, and may be subject to a range of penalties.

4 The Smuggling Protocol does not criminalize the smuggled migrants themselves; migrants would not be liable for a Protocol offence on the basis of having been smuggled. However, these migrants may still be liable for punitive actions under the provisions of immigration or related laws in a particular country. The penalties in this regard derive from national laws and regulations and not from the Protocol. They range from “a slap on the hand” to imprisonment, expulsion or deportation, and, at times, the violations may fall under the State’s criminal code.

What You Need To Know About...
Adequate Legal Code and Responding to Smugglers

The primary purposes of the Palermo Protocol include the criminalization of smuggling by clarifying the nature of the crime and establishing stronger and more consistent penalties across nations.

Prior to the launching of the initiative to create and enact such a Protocol, many States had no specific penalties for migrant smuggling, or the penalties that did exist were generally less than needed to discourage the crime. National enforcement capacities were equally weak. As awareness has risen around this issue, States are changing and strengthening their laws and enforcement capacities.

States are obliged to ensure an adequate basis against migrant smuggling in their legal code when they sign the Protocol. States may of course also choose to strengthen or align their legal codes without signing the Protocol.
What You Need To Know About...

The Nature of Migrant Smuggling

While, by definition, migrants cooperate with their smugglers—even seeking them out and paying them—the act of smuggling can often be a dangerous and abusive one. Reports abound of the death or serious injury of migrants during the smuggling process, whether they are attempting to enter Australia, the United States, Western Europe, or other preferred locales by land or sea, or while they are en-route to these destinations.

Smuggling operations have many of the following characteristics that, while not uniform among smuggling groups, are generally representative and provide a basis for formulating counter-smuggling strategies:

- a broad transnational reach
- an ability to create or use diverse networks of service providers to help in various stages of the operations
- an ability to influence government officials at many levels
- access to large sums of money at many locations
- ties with other criminal enterprises
- the ability to shift areas of operation according to “market” conditions (ease of entry, attractiveness of destination to existing and prospective clients)
- an association with and high comfort level with persons capable of violence within their networks

The growth of organized smuggling rings can have a dampening effect on the rule of law and public trust in government. In addition to the abuses and dangers to the migrants themselves, such large amounts of money are involved that corruption of public officials and the creation of “shadow” governance systems linked to organized crime can undercut the rule of law. These are among the most disturbing outcomes or spin-offs of large-scale migrant smuggling enterprises.

It seems safe to say that smuggling is many migrants’ preferred method of achieving unauthorized entry into many of the more developed countries. The large number of irregular migrants who have succeeded using this strategy undoubtedly helps build the market for more persons to attempt moving in this manner, as well as continually strengthening the smugglers’ networks. The risks involved, even when well known, do not seem to outweigh the potential gains. The profits involved provide the means for smugglers to continually update their strategies and techniques, and to pose an ever-increasing threat to responsible governance.
What You Need To Know About...

How Smugglers Operate

Migrant smuggling activities range from rather simple operations with narrow scope, to those reaching many destinations and offering a full range of services to the client. At the most sophisticated level, these operations involve complex itineraries through several countries combining, where needed, air and land transport and false documents of various kinds including passports, visas, and relevant permits.

Some smugglers are able to co-opt government officials at key points in the process, including those involved in document issuance, document inspection, and entry/exit decisions at various levels.

Migrant smuggling operations are usually highly flexible, with the ability to adjust and change itineraries and strategies quickly in response to changing levels of security at key points in the process. This requires the ability to create or obtain travel documentation, and possibly to secure the collusion of government officials for many different sites at relatively short notice. With substantial sums of money involved, smuggling groups, particularly the larger ones, need to have large amounts of cash available, at many locations, and an ability to manage a large illicit enterprise.

With substantial profits, organized smugglers require ways to launder or hide their ill-gotten gains. This can be done by investing to further build their smuggling business and other criminal enterprises. Research by Interpol has identified links between migrant smuggling operations and other forms of organized crime.

There have been some reports of collusion of employers with smugglers. Reports indicate that some employers arrange the services of smugglers in order to bring migrants to work in the destination country. In such cases, the employee usually arrives indebted to the employer and, as a result, has been exploited.

Smuggling operations are also adept at training or preparing their clients. Migrants can be briefed on what clothes to wear and how to answer particular questions from border and other officials, and be given other means to minimize attention and maximize the probability of a secure border passage and, if possible, a supported stay in the destination country through the asylum system.

Within the smuggling world, the more unscrupulous approaches focus on immediate gain without regard to completing the transaction to the satisfaction of the migrant.
Example

There have been reports of migrants smuggled into Bosnia and Herzegovina and being advised that they were in Slovenia and could walk across the Austrian border into the EU. Instead, they encountered the Slovenian border and were apprehended.

Similar reports on migrants left in the wilderness by their smugglers, or tossed into the sea, are common. These reports support the view that hardened criminals who are willing to severely abuse others, or commit murder for money, populate a segment, perhaps a significant segment, of the migrant smuggling industry.

Apply What You Have Learned

1. Has your State signed and ratified the Palermo Convention and its Protocol related to the smuggling of migrants?

2. Does your State have specific laws in place criminalizing migrant smuggling and approximating the guidelines articulated in the Protocol?

3. Give an example of how smugglers operate in your setting.

4. How does your national law regard migrants who are caught being smuggled?
Topic Three

The Nature of Human Trafficking

Trafficking in persons is a serious violation of human rights. Trafficking works on the basis of the debt bondage imposed on the victim by the traffickers in order to pay their expenses. In the special circumstances of trafficking, it is extremely difficult for the victim to have the capacity to escape and denounce the system that has trapped them.

Trafficking in persons may or may not involve the crossing of international borders. In contrast to migrant smuggling, trafficking can occur within the borders of one country as internal trafficking. The causes of trafficking are many and varied. The causes are also different in countries of origin and countries of destination.

Trafficking involves aspects of migration, labour, gender, and criminality. Consequently, many different intergovernmental and non-governmental organizations, with diverse mandates, are involved in either the discussion of trafficking issues or in the implementation of counter-trafficking activities.

The extent to which feminization of migration increases the vulnerability of women and children is discussed in Section 2.10, Migration and Gender.

Important Points

1. Trafficking in persons is an underreported crime. This is due to the low priority given by authorities in many countries to the problem of human trafficking. Legislation is often lacking, inadequate, or not implemented. This makes the prosecution of traffickers very difficult and often impossible. Trafficking convictions are often based on witness and/or victim testimony, which is hard to obtain because trafficking victims are either deported as illegal migrants or, if identified as trafficked persons, are often too frightened to testify. Inadequate legislation means that the law enforcement authorities often prefer not to prosecute traffickers since the effort expended seldom results in a conviction.

2. Trafficking should be seen as a process, starting with the recruitment and ending with the exploitation of the victim’s work. The main elements of the process are coercion, which could start at any
moment during the process, and exploitation, which normally starts once the victim has been put to work.

3 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime, provides a comprehensive definition of human trafficking. The definition may be paraphrased as:

The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. The consent of a victim of trafficking in persons to the intended exploitation shall be irrelevant where any of the means set forth above have been used.

4 This internationally approved definition has five elements:
- recruitment (false job offers, kidnapping, buying a person, etc.)
- physical transportation of the trafficked persons
- physical or psychological coercion and/or the deception involved in the offer
- exploitation of the work of the person as the final objective
- absence of informed consent

5 In order to understand the nature of human trafficking, it is important to apply this definition and clear up a misconception, held by some authorities, that many of the victims of trafficking knew from the beginning that they would, for example, be working in the sex industry and, thus, trafficking as such does not exist. A person may understand the type of work he or she will be doing, but what is not known is that there will be no payment, the work will be forced and under unacceptable conditions, and that the victim will not have freedom of movement. Therefore, under these circumstances, the fact that the potential victim agrees to work, for example, in the sex industry, does not diminish the crime of trafficking and the significance of the serious violation of the human rights of the victim that is involved.
What You Need To Know About...

Causes of Trafficking in Countries of Origin

In the country of origin, the most common causes are poverty, unemployment, and lack of opportunities. These factors motivate potential victims of trafficking to look to other countries for opportunities they do not have at home. They become, then, easy prey for traffickers making false promises about job offers in foreign countries.

Political and humanitarian crises displace populations and expose the most vulnerable, usually women and children, to the designs of traffickers and criminal groups.

In many less developed regions of the world, children are entrusted to more affluent friends or acquaintances with the intention to improve their lives and relieve their families of economic burden. This practice often sends these children into the trafficking market for slavery. Some social and cultural practices in certain regions and countries, for example, the marginalization and/or subordination of women and girls combined with gender discrimination against them, increases their vulnerability and facilitates the trade in young women and girls by their families and friends.

What You Need To Know About...

Causes of Trafficking in Countries of Destination

The most important cause in destination countries is the demand for inexpensive labour. Inexpensive labour benefits entrepreneurs in destination countries and this demand is satisfied by irregular immigration, smuggling, and trafficking.

The demand for foreign women to work in the sex industry in countries of destination readily invites the satisfaction of that demand by making women and minors into commodities to be coerced, transported, and forced to work abroad.

Restrictive immigration policies in traditional countries of destination can push potential migrants to resort to the illegal migration services of traffickers and smugglers.
What You Need To Know About...

*Trafficking Mechanisms*

The first element of the mechanism is the recruitment of the victim by traffickers or intermediaries.

Recruitment can have different forms, the most violent being the kidnapping of the victim in a situation of extreme vulnerability. For example, in isolated places, a humanitarian crisis, or in refugee and displaced persons’ camps.

Other forms of recruitment occur through false employment offers in urban centres in the country of origin or, more often, in foreign countries. These offers can be related to different types of employment, including entertainment, sex work, domestic work, studies, etc.

The reality the victims find at the destination point is normally different, consisting of forced and unpaid sex work, domestic or other type of slavery, or simply non-remunerated work. The victim is then forced to work in order to pay an accumulated debt with the traffickers for services such as travel documentation, visas, transportation, bribes, lodging, work placement, protection, medicines, and food.

Physical and psychological coercion are used to convince the victim to comply with the trafficking system. Women and minors bound for forced prostitution go through systematic rape and physical abuse that destroys their self-esteem and dignity. Psychological coercion includes threats of violence and of revenge against family members back home. Coercion can also include threats to denounce the victim to local police or to the family by disclosing the work activities of the victim. In these circumstances, combined with illegal residence, no documentation in the country of destination, and with no knowledge of the country or of the language, it is extremely difficult for the victim to have the capacity to escape and denounce the system.

The players in the trafficking process have diverse, but important, roles to play. Each of them contributes at different stages towards the final objective, which is the long-term exploitation of the victims for economic or other gain. Members of the trafficker gangs diversify their tasks starting with the recruiters, those involved in document forgery, then the transporters and escorts of victims, the corrupted public officials, those who receive victims in the country of destination, the job facilitator, the impresarios, the dealers, the debt collectors, the body guards, and the pimps.

Those involved in trafficking persons also tend to be active in other international organized criminal activities. For example, drug and arms trafficking, car thefts, smuggling of migrants, and the exploitation of prostitution.
What You Need To Know About...

Incentives for Trafficking

There are few risks for traffickers because, as yet, few countries in the world have adopted anti-trafficking legislation and supported it with strong enforcement measures. There is an increasing need to educate law enforcement officials and institutions about the realities of trafficking, investigation techniques, and the need to protect and assist victims. At present, the capacity to punish traffickers remains low.

While few traffickers are punished, many victims are. Many countries prosecute victims of trafficking as irregular migrants without paying attention to their needs for protection and assistance as victims of a crime.

Another incentive is the huge financial profits the traffickers obtain compared with the low investment they make. Compared with other illicit forms of trafficking such as drugs or weapons, the investment made by the traffickers on a victim are limited to transportation, and sometimes documentation, bribes, protection, and marketing. Normally, the selling price of a victim of trafficking is several times the investment made by the trafficker. Moreover, the permanent exploitation of the work of the victim by traffickers and intermediaries produces continuing financial profit for the latter. For example, the services of a victim of trafficking for sexual exploitation would be sold several times per day.

Apply What You Have Learned

1. Has your State signed and ratified the Palermo Convention and its Protocol related to trafficking of persons?

2. Does your State have specific laws in place that make trafficking in persons a crime and that approximate the guidelines articulated in the Protocol?
3. Does your government administration include a structure or structures specializing in the investigation and prosecution of trafficking operations?

4. What measures would you recommend to remove the incentives for trafficking in your setting?

5. What measures can you identify that would be effective at the same time for the problem of trafficking and for the problem of migrant smuggling?
Topic Four

Consequences of Trafficking and Policy Responses

The consequences of trafficking are varied and wide-ranging, affecting victims and the countries concerned in different ways.

For the victims, the first grave consequence is the serious violation of their human rights. They are exposed, on a daily basis, to physical and psychological coercion, abuse, and violence. They are often treated as criminals by officials in countries of transit and destination due to their irregular status in the country, and their status as illegal workers or sex workers.

Given their type of work and/or their working conditions, victims are often exposed to the risks and dangers of serious diseases, including sexually transmitted illnesses or mental illnesses. Many of the victims, upon returning home, are faced with reintegration problems because of discrimination and stigmatization regarding the work they have performed in other countries, or regarding the failure of their migration process.

The consequences are also grave for the countries of origin, transit, and destination. One consequence is the increase in irregular migration in countries of transit and destination. Another consequence is the presence of criminal organizations engaged in diverse criminal activities including drugs, theft, exploitation of prostitution, and other criminal violence.

Important Points

1. Trafficking has become a global issue for the international community and for specific governments. Despite this, there is no systematic collection of data on trafficking. What is more usual is finding that data relating to irregular migration includes some data on trafficking and smuggling.

2. Trafficking poses concerns for national security and contributes to the possibility of aggravated diplomatic relations with other countries. The presence of visible numbers of foreigners connected with illicit activities may trigger xenophobic attitudes in countries of destination.
3 Legislation to address trafficking is often lacking, inadequate, or not implemented, making the prosecution of traffickers very difficult and often impossible. Inadequate legislation, for both prosecution and for victim and witness protection, means that police authorities often prefer not to prosecute traffickers at all because they know that the effort expended seldom results in a conviction.

4 The corruption of governmental officials to facilitate trafficking is a serious threat to the functioning of the State in affected countries.

5 Human trafficking is an underreported crime and the majority of cases remain undiscovered. This is due to the low priority given to the problem of human trafficking by authorities in many countries.

**Example**

Figures on trafficking released by the US State Department in April 2004 indicate that between 600,000 and 800,000 people are trafficked across international borders worldwide. Approximately 80 per cent of the victims are women and girls, of whom 70 per cent are trafficked for exploitation in the commercial sex industry. Such estimates are widely considered to be conservative, as they do not include trafficking within countries or the trafficking of men.

The European Commission reported in March 2001 that an “estimated 120,000 women and children are being trafficked into Western Europe each year.” As with the American estimates, it is unclear how these figures were arrived at. In a recent report on trafficking in EU Member States, Europol, the EU’s law enforcement agency, commented that the overall number of victims trafficked in the EU is still unknown and only estimates are available. What is obvious is the fact that the number of victims is much higher than the official statistics from investigated cases in Member States.

6 Estimates of the number of persons who are victims of trafficking usually concern only the trafficking of women and children for sexual exploitation, and not other forms of exploitation. Even these numbers are approximate and not representative. At the global level, the most widely quoted figure reflects the number of women and children believed to be trafficked worldwide each year across international borders.

7 Trafficking convictions are often based on witness and/or victim testimony. Such testimony is hard to obtain, as trafficking victims are either deported as illegal migrants or, if identified as trafficked persons, are often too frightened to testify. This is another reason why police authorities often prefer not to prosecute traffickers.
What You Need To Know About...  
*The Reaction of the International Community*

Apart from the UN *Convention Against Transnational Organized Crime*, including the Protocol against Trafficking, each country has reacted differently to the crime of trafficking.

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**Example**

In Europe, efforts made by the European Commission, since 1995, have resulted in a series of framework decisions dealing with the assistance of victims and the necessary action by member States. The *Brussels Declaration*, stemming out of the European Conference on Trafficking in Persons, which took place in Brussels in September 2002, established clear guidelines for Europe on how to prevent trafficking, assist its victims, and strengthen the cooperation of law enforcement and judicial institutions.

Some European countries, for example, Italy and Belgium, have included elements in their legislation that allow for the protection and assistance of victims.

The United States of America has adopted anti-trafficking legislation for the protection of victims and prosecution of criminals. The legislation includes the issuing of an annual World Trafficking Report where countries in the world are classified in relation to their activities to address trafficking.

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Several regional processes dealing with migration, such as the Puebla Process³ in the Americas and the Bali Process⁴ in Asia, have included trafficking as the main topic for discussion and regional coordinated actions. The Economic Community Of Western African States and the Southern African Development Community have also manifested concern for trafficking in persons and have designed policies and strategies to address it.

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What You Need To Know About...  
*Policies That Address Trafficking*

Meeting the protection needs of the victim and providing the victim with assistance should take precedence in any policy planning and programme development. Trafficking is first and foremost a violation of human rights; therefore, the protection of the person and the maintenance of these rights should receive the highest priority.
Counter-trafficking policies and activities at the national level should take the following considerations into account:

- Respect for the human dignity and well-being of migrants should be reflected in all national legislation, activities, projects, and programmes.
- A gender analysis is necessary in order to understand the causes and the consequences of trafficking in persons. As trafficking can occur for different types of exploitation, for example, labour, sexual, military, organ removal, etc., traffickers will select their victims according to their sex in response to the market’s demand and the ultimate exploitation objective.
  - Gender discrimination predisposes women and children toward situations of exploitation. In general, gender discrimination today tends to put women and children in a vulnerable and disadvantaging situation where it is more difficult for them to have access to correct information, to receive consideration for their rights as persons, and to have equal opportunities to fight for their rights.
  - Gender should also be considered as an important indicator when trying to support the victims of trafficking. Depending on the type of exploitation, the effect on the victim will vary. For example, if men and women have been trafficked for sexual exploitation, the effects on their health may be different than the effects caused by other forms of exploitation. This factor should be considered when planning policy and activities.

Section 2.10, Migration and Gender, provides more detail on gender and policy development, and on gender analysis.

 Trafficking victims face a variety of risks to their health with negative consequences for their immediate family or community. Evidence indicates a particularly strong vulnerability among trafficking victims to a variety of risks to their health. These health risks include mental conditions, reproductive health conditions and a range of communicable diseases, such as HIV/AIDS, and a host of sexually transmitted illnesses.

A comprehensive policy response to the problems posed by human trafficking will address the entire spectrum of health challenges for the victim. This is done along a continuum that includes the periods before, during, and after the trafficking experience. The exploitative and abusive contexts in which they are victimized deprive victims of any empowerment that would help them realize their basic reproductive health rights. This is often compounded by poverty that renders them vulnerable to poor health and victimization, often at very young ages.

Issues related to migration and health are dealt with in greater detail in Section 2.7, Migration and Health.
The complexities of the trafficking problem and its vast geographical extent requires concerted efforts by relevant entities at the local, national, regional, and international levels. It is vitally important to form partnerships with intergovernmental organizations, governments, NGOs, international organizations, academic communities, legislators, community leaders, and families confronted with trafficking. Partnerships will facilitate collaborative work on policy, legislation, and operational measures.

The expertise, extensive networks, access, and in-depth understanding of local communities should be an integral part of any national response to the problem of human trafficking.

Information campaigns in countries of origin can be conducted to inform potential victims of the dangers of trafficking and irregular migration.

Section 1.10, Managing Perception, discusses the role of information campaigns and government responsibilities for communications.

Apply What You Have Learned

1. To what extent do the policies and related legislation in your setting identify and respond to the need to address human trafficking at the international and national levels?

2. Does your State have specific regional and cross-regional cooperation activities in place to address trafficking in persons?
3 Are assistance programmes for the victims of trafficking adequate for the task? Do these programmes reflect the emerging international consensus on how victims of trafficking should be treated?

4 With respect to human trafficking, how effective are the mechanisms for intelligence and information exchange between the law enforcement agencies in your setting?

5 How can a gender analysis help address the problem of trafficking in your setting?
Topic Five

Strategies to Counteract Irregular Migration

The motivation of States to reduce irregular migration may spring from a desire not only to limit the number of irregular migrants entering or transiting their country, but also to weaken or eliminate criminal elements engaged in smuggling, trafficking, and other crimes, including capital crime. Reducing irregular migration can also better secure the well-being of migrants and potential migrants by keeping them out of the hands of persons who are not concerned for the welfare of migrants, and who are willing to use force and abuse to achieve their purposes.

Strategies to counteract irregular migration can also address root causes and improve links between migration and the economic and social development of countries of origin. While not all destination countries will link migration policy with their assistance strategies for less-developed countries, there is a trend to support these strategic links in order to reduce the push factor of economically motivated migration.

The relationship between migration policy and international development policies is examined in greater detail in Section 2.3, Migration and Development.

Strategies that address irregular migration can be grouped in the following general areas. Each will be expanded in the “need to know” points below:

- adequate legal code and response to smugglers and traffickers
- improved investigative capacities and enhanced regional cooperation
- improved frontier and pre-frontier management
- improved personal documentation for migrants, including travel documents and documents for internal use
- limiting possibilities for illegal employment
- ensuring consistent standards and facilitating decision making in the asylum system
- opening up legal, orderly, and managed channels of migration to relieve some pressures on emigration
What You Need To Know About...

**Improved Investigative Capacities and Enhanced Regional Cooperation**

Anti-smuggling strategies have a major focus on strengthening capacities for criminal investigations, including the investigation of financial crime. Government functions that have been developed in the past and used to address other forms of organized crime, for example, drug trafficking, are either being extended to investigate migrant smuggling, or new units are being established specifically to focus on migrant smuggling. The Protocol intends to cripple the financial structure of smuggling operations, and special financial investigative functions are being incorporated into these units.

International cooperation in investigations is being strengthened or established. Agencies such as Europol and Interpol are being specifically improved to provide a facilitation, coordination, and technical resource service for these national investigative structures. In some locales, specific regional entities have been established to serve as centres for coordination and joint action against trans-border crime. The South East Europe Cooperation Initiative Regional Centre for Combating Trans-Border Crime (SECI) is one such initiative.

Anti-smuggling strategies predominantly reflect measures being taken by the more developed destination and transit countries. Lack of resources prevents a similar level of activity in many of the less-developed countries that also suffer the effects of migrant smuggling into or through their territory.

Technical cooperation activities between developed and less developed States that are designed to improve the capacity of the less resourced countries are increasingly common.

What You Need To Know About...

**Improved Frontier and Pre-frontier Management**

There has been a noticeable trend, particularly after the 11 September 2001 attacks in the United States, towards shifting the location of border control activities abroad or further away from the immediate physical borders of a State. This shift of borders is evidenced in five main strategies:

- **Passenger Pre-Inspection**, where immigration and customs officers are stationed abroad at airports and have responsibility for inspecting passengers departing for the officers’ country.
- **Posting of Immigration Liaison Officers** close to the centres of criminal activity, or in source countries of irregular migrants, to work with local law enforcement agencies and international agencies such as Europol to unearth smuggling rings and help close down related activities.
illegal and criminal operations.

- Increased use of Immigration Liaison Officers and immigration inspection officers abroad to work with, train, and advise airline staff in the prevention of travel of persons with fraudulent documents or other fraudulent identification, collaborating with similar officers from other countries.
- Advanced Passenger Information agreements between some countries, and between airlines and Governments, that permit passenger manifests to be sent by the airlines to immigration authorities of the country of destination, ahead of flights, for pre-checking before arrival.
- Carrier sanctions aimed at making carriers accountable for embarking and delivering undocumented or improperly documented migrants

The issues related to these changes of approach to border control and to the relationship between governments and international carriers are dealt with in greater detail in Sections 3.3, Border Management Systems, and 3.4, International Carrier Responsibilities.

What You Need To Know About...

**Improved Personal Documentation for Migrants, Including Travel Documents and Documents for Internal Use**

Measures are being widely adopted to improve the integrity of security features in identification and travel documents, and to develop new ways of recording and verifying travellers’ and migrants’ identities. A number of countries are planning to introduce, or have already introduced, replacement residence cards and other means of identification that incorporate special electronically readable codes and that are more resistant to forgery. This can assure greater certainty when identifying an individual and confirming that he or she is the genuine holder of the card. Part of this process involves the use of technology allowing identification through biometrics—unique personal data such as facial structure, hand geometry, fingerprints, or the patterns of the human eye—to authenticate the identity of individuals.

Section 3.1, Passport and Visa Systems, has more information on machine-readable documents and biometric identification.
What You Need To Know About...

**Limiting Possibilities for Illegal Employment**

Many irregular migrants entered legally, but subsequently become irregular, as they overstayed their visas or violated other conditions for authorized stay in a country.

Migrant smuggling, as defined in the Protocol, can include the facilitation of unauthorized stay after a migrant becomes irregular. To reduce this kind of irregular migration, and reduce the power of smuggling rings to facilitate it, destination countries are taking stronger actions to make it more difficult for non-authorized migrants to work.

One area of focus is to increase the responsibility, and the culpability, of employers who hire irregular migrants.

What You Need To Know About...

**Ensuring Consistent Standards and Facilitating Decision Making in the Asylum System**

The reform of asylum determination systems has become essential in the effort against migrant smuggling. The attractiveness of a destination, the ease of access to residence rights through the asylum system, and the system of benefits offered to applicants are important factors in the migrants’ decisions and the smugglers’ business offers.

Migrants are attracted to irregular options for migration by relatively long processes of decision making in the asylum systems of common destination countries, particularly in Western Europe. These systems offer meaningful variations in the benefits provided to asylum-seekers, and a lack of consequences for remaining in the country for the majority whose applications are found to be without sufficient merit.

A general trend is emerging in the West to speed case processing significantly, limit benefits (including mobility) to migrants during the application review stage, and tighten procedures that have allowed most of those denied refugee status to remain in the country without authorization. In general, the strategy is one of disentangling the nexus of asylum and migration by removing from the asylum system, as quickly as possible, those who do not merit inclusion. National agencies and international organizations are being encouraged to focus on their particular mandates, with migration matters outside refugee protection being handled by authorities and departments with overall migration management responsibilities.
What Do You Think?

Some argue that these approaches will lead to a weakening of the asylum system and weakening of human rights and protection-based approaches to migrants. Others argue that for an asylum or protection approach to be strong, it must be limited to those who truly merit its special services. The emerging consensus is toward better focused asylum systems, “right-sized” to respond to the actual caseload, and significantly strengthened migration management systems that are able to incorporate protection matters as a specific area of specialization. This approach directs resources to match needs by managing migration through structures other than those dedicated to refugee protection.

What You Need To Know About...

Opening Up Legal and Managed Channels of Migration

Illegal means of entry, including the use of smugglers by migrants, become the default option when legal means of entry and employment are unavailable. It seems beyond dispute that the migrants entering developed destination countries illegally for employment play an important and even essential role in sustaining these countries’ economies.

Legal channels of migration to economically developed countries should be expanded in order to address the problem of illegal migration comprehensively. These channels must have solid management strategies for directing movements. The EC articulates this further in policy documents while at the same time noting that “opening or re-opening legal channels for migration cannot be seen as a panacea against illegal immigration.” Actions to manage and direct movements can contribute to the reduction of smuggling by creating realistic alternatives within legal and managed systems. These systems also help to keep migrants out of harm’s way, and are thus an important contribution toward the securing of basic human rights.
Apply What You Have Learned

1. Does your government administration include a structure or structures specializing in the investigation and prosecution of smuggling operations (including a financial crimes specialization)?

2. Does your State have specific regional and cross-regional cooperation activities in place to share best practices, jointly solve common problems, and address specific cases related to incidences of smuggling?

3. How could opening up legal and managed channels for immigration help your State address migrant smuggling? What are the issues associated with this approach?

4. Which anti-smuggling strategies discussed in this Topic would have the greatest impact in your setting?

5. How can the marketability of your State for smuggling be reduced?
Concluding Remarks

The effective management of irregular migration combines law enforcement measures with prevention and education, both within States and internationally.

This Section reviewed the nature of irregular migration, including migrant smuggling and human trafficking, and its impact on society, economies, migrants, and international security. The criminalization of migrant smuggling and trafficking in persons provides opportunities that may help you to identify policy options and better understand the operational implications related to policy implementation in this area of migration management.

As long as the market for trafficking in persons exists, the human rights abuses it entails will continue. International cooperative efforts are much more effective than individual initiatives by governments. Strong legislation, accompanied by adequate enforcement measures and remedies for victims, will enable States to address the problem internally as well as collectively with other States.

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Endnotes


2 IOM has developed a Counter-Trafficking Module Database so as to facilitate management of information gathered from all IOM Counter-Trafficking and Return and Reintegration programmes. It aims to strengthen both research capacity and understanding of the causes, processes, trends, and consequences of trafficking, thus enabling IOM to better target its counter-trafficking policies and programmes. The database collects first-hand information from in-depth interviews, based on a standardized questionnaire, with all trafficked persons assisted by IOM. This interview allows IOM to understand their socio-economic and family background, their experience in migration, their recruitment by traffickers, the route taken, the violence and/or exploitation they suffered, their current condition, and their needs in terms of health, protection, return, and reintegration.
3 Regional Conference on Migration (RCM or Puebla Process): http://www.rcmvs.org/