

**CONFERENCE ON SMUGGLING OF
MIGRANTS**

**CONFERENCE SUR LE TRAFIC DE
MIGRANTS**

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**Final observations for Council of
Europe Further Action on
the Smuggling of Migrants**

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

- The smuggling of migrants is a heinous criminal offence that often involves the serious exploitation of human beings and a gross disregard towards the human rights and fundamental freedoms of victims.
- Smugglers seek to obtain financial or other benefits from refugees and other migrants in vulnerable situations by taking advantage of discrepancies and gaps in national and international systems in order to avoid accountability.
- At the Council of Europe, in response to the challenges presented by the significant increase in migrant smuggling in 2015, the Maltese delegation to the European Committee on Crime Problems (CDPC), presented a proposal for new activities on the topic of ‘Criminality and Migration’.
- Since then, the CDPC agreed to include criminal justice aspects related to this issue in future CDPC activities and to study where the CDPC can provide added value to a criminal justice and law enforcement response.
- In May 2016, at their 126th Ministerial Session in Sofia, Bulgaria, the Committee of Ministers embraced the proposal and welcomed the preparation of adequate measures to provide member States with concrete tools to prevent and fight the smuggling of migrants.
- In light of the remarks and presentations made during the Conference, it is possible to draw some observations and recommendations for further action of the Council of Europe.

Session I: Prevention

- Strategic measures are needed to turn smuggling from a “low risk, high profit” activity into a “high risk, low profit” crime.
- Preventing and suppressing the smuggling of migrants involves both medium- and long-term strategies based on accurate data and information regarding all aspects of this phenomenon, including the causes and conditions that drive would-be migrants into the hands of smugglers and the operations individual perpetrators and organised criminal networks.
- Prevention involves measures aimed at would-be migrants, alerting them to the real and potential dangers associated with smuggling.

- Prevention further involves measures targeted at the spectrum of persons who act as smugglers, warning them about the penalties and punishment for their criminal offences.
- Comprehensive knowledge and data on smuggling of migrants are indispensable to assist member States in their efforts to develop educational material, awareness-raising campaigns and evidence-based prevention strategies.
- The Council of Europe is in a prime position to gather and disseminate research and data collection relevant to all member States. Further studies on the levels and characteristics of smuggling, on the countermeasures adopted by member States, and on international law and best practices can serve to inform the development of criminal justice aspects of legislation and policies.
- Technical experts' meetings can be convened in order to exchange experiences, develop strategies and recommendations on the priorities in the prevention field. Their findings can inform the further work of the CDPC.

Session II: Aspects of criminalisation of the smuggling of migrants

- Legal instruments and policies to counter the smuggling of migrants and prosecute criminal offenders are already available. However, they do not always prove to be as effective as desired.
- The criminalisation of migrant smuggling varies at the international, regional and national levels. The lack of a harmonised system works to the advantage of migrant smugglers, who can exploit existing loopholes to avoid criminalisation.
- Member States can further improve the legal response to the smuggling of migrants by developing common criminal law standards.
- The Council of Europe has already conducted studies identifying some of the greatest challenges in this field. However, further efforts could be put in place in order to approach a general consensus on the identification of attainable and effective short- and long-term solutions.

- As a first step, member States could consider the possibility of setting up a database containing country profiles of national legislation and policies concerning the criminalisation of migrant smuggling.
- Such a database has proven useful in the field of counter-terrorism. Similarly, the Council of Europe could, through the CDPC, facilitate the exchange of information, e.g. by regularly publishing country profiles on migrant smuggling-related legislation and policies of member and Observer States.

Session III: Promotion and facilitation of international co-operation

- Migrants smuggling is a transnational criminal phenomenon and the suppression of it requires effective international co-operation.
- It is crucial that member States make better use of the existing international instruments and mechanisms for co-operation in criminal matters to hinder the activities of smugglers.
- One possible approach could be to elaborate a comprehensive Council of Europe strategy in this field.
- It is just as crucial that co-operation strategies are implemented with the participation of source, transit and destination countries. To this end, alternative forms of co-operation can prove successful, such as specific co-operation agreements for single cases or specific memorandum of understanding for focused co-operation issues, as appropriate.
- Furthermore, co-operation with other international organisations, such as the International Criminal Court among others, operating in countries of origin or countries of transit could prove fruitful, particularly where such co-operation could support ongoing investigations and other criminal justice efforts.
- The Council of Europe could examine the opportunity of setting up a network to facilitate information exchange and to provide member States with a framework for liaising among them as well as with relevant sectors of the organisation.

- As an example, the network could collate and disseminate relevant statistics, reports and other documents, and identify areas for further research and development. Participation in the network could be extended to certain non-member States, especially those concerned by the phenomenon of migrant smuggling.
- It is also necessary to further improve border security and the capacity of all member States to effectively handle a large influx of illegal migrants in a manner fully compatible with international legal obligations.
- To this end, the Council of Europe could work in close co-operation with other global and regional intergovernmental and supranational organisations, in the provision of training for border officials and other relevant law enforcement entities, thereby aiming at enhancing available expertise to detect smuggling networks and efficiently distinguishing between victims and offenders.

Session IV: Protection of the rights of smuggled migrants

- Smuggling of migrants exposes them to human rights violations and abuses, notably their right to life, freedom from inhuman and degrading treatment, the rights of the child, the right to be protected from trafficking and sexual exploitation. Smuggling exposes children, in particular unaccompanied minors, to sexual abuse, violence and human rights abuses.
- Smuggling, being a criminal activity, is a security risk for European societies; it threatens not only migrants' rights but also it can potentially have a negative impact on our human rights.
- Smugglers benefit from the failure of States to ensure effective protection of migrants' rights, for example the right to seek asylum, or the right to family reunification as well as failure to have in place safe and legal pathways for people seeking international protection from Council of Europe member states.
- Smugglers benefits from migrants' lack of access to information about how to claim protection from the State or how to legally access channels of migration.

- States have an obligation to protect smuggled migrants under their jurisdiction from human rights violations committed by State actors and other private individuals in compliance with the ECHR.
- Criminal justice measures in response to smuggling must ensure that the human rights of smuggled migrants are protected at all times while present in Council of Europe member States and during their return to countries of origin or transit countries, in compliance with Articles 2, 3, 5, 8, 13 of the ECHR and Article 4 of Protocol 4 of the ECHR.
- Criminal justice measures must avoid any collateral effects on the human rights of migrants. For example while states must continue to save the lives of smuggled migrants whenever they are at risk, states should not punish as smugglers the rescuers or those providing humanitarian assistance.
- The Council of Europe is sufficiently equipped with standards which guarantee the human rights of smuggled migrants. In order to help member States' authorities to comply with their obligations, it can be envisaged that border police officers, migration and asylum officials, prosecutors and judges receive continuous training on relevant Council of Europe standards.
- The Council of Europe mechanisms against human trafficking (GRETA), violence against women (GREVIO) and the sexual exploitation of children (the Lanzarote Committee) should continue to be supported and strengthened in order to ensure the protection of the rights of smuggled migrants. Also, GRECO should continue to be supported in its activities to construe a link between smuggling and corruption.