

# International Law relating to Smuggling of Migrants

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European Committee on  
Crime Problems (CDPC)

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# UN SMUGGLING OF MIGRANTS PROTOCOL

## Background



Aug 1997: proposal to the IOM to develop and international framework against smuggling of migrants by sea



Sept 1997: Letter to UN Secretary-General proposing an international treaty to combat migrant smuggling

# UN PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR

## Article 2 – Statement of Purpose

The purpose of this Protocol is to prevent and combat the smuggling of migrants, as well as to promote cooperation among State Parties to that end, while protecting the rights of smuggled migrants

## Article 3(a) – Definitions

“Smuggling of migrants” shall mean 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.

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## Article 6 Criminalization

Article 6(1)(a) Smuggling of migrants

Article 6(1)(b) Producing and providing fraudulent travel or identity documents for the purpose of smuggling of migrants

Article 6(1)(c) Enabling illegal residence

## Article 6(3) Aggravations

- Endangering the safety of smuggled migrants
- Inhuman or degrading treatment of smuggled migrants

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## Limitations of Criminal Liability

- ★ No liability without financial or material benefit
- ★ No liability for humanitarian assistance/smuggling
- ★ No liability for smuggling of family members (unless financial or material benefit)
- ★ No liability of smuggled migrants for being the object of migrant smuggling (Article 5)

# EU DIRECTIVE AND FRAMEWORK DECISION

Directive 2002/90/EC

‘defining the facilitation of unauthorised entry, transit and residence’;

Framework Decision 2002/946/JHA

‘on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence’

Article  
1(1)

assisting a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of laws of the State concerned on the entry or transit of aliens.’



Liability for assistance without financial/material benefit

Article  
1(2)

allows Member States to exempt from liability those cases of facilitating illegal entry that were committed for humanitarian purposes

No exemption for smuggling of family members

# GAPS AND WEAKNESSES

- ★ Distinction between smuggling of migrants and trafficking remains blurry
- ★ Limited protection of rights and assistance to smuggled migrants;
- ★ No incentive for smuggled migrants to cooperate with authorities and testify against smugglers
- ★ Law enforcement continues to focus on migrants, not smugglers
- ★ Domestic implementation very diverse;
- ★ Criminalisation of not-for-profit smuggling;
- ★ Uncertainties over 'financial or material benefit' threshold

## FURTHER WORK – THE WAY FORWARD

- ★ Review implementation and domestic offences by Member States (what/who is criminalised and how)
- ★ Distinction to trafficking in persons
- ★ Relationship and reconciliation with obligations under the *Convention and Protocol relating to the Status of Refugees*
- ★ Problem of smuggling within the Schengen Zone (effect of Dublin III Agreement; impact of Hot-Spots; ...)