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Statement

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**Fifth Informal 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”**

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Dear Co-Facilitators,

Excellencies, esteemed colleagues and friends,

I am pleased to be here with you today to present this session's issue brief, prepared with the support of the International Organization for Migration and the Global Migration Group.

As we embark on discussions that will have at times a legal or technical character, we should not lose sight of the fact that we are dealing with immense human tragedies. Even dramatic media reports do not do justice to the scale of the suffering produced by human trafficking and contemporary forms of slavery, or to the depth of despair that puts thousands of women, men and children in the hands of unscrupulous smugglers.

Trafficking in persons and smuggling of migrants are globally prevalent, distinct but related crimes defined in international law. Yet, they are too often conflated and confused. It is essential to understand them as distinct crimes. The distinction is particularly critical as states develop and implement policies to address these issues as well as provide needed protection and assistance to affected individuals.

Allow me to outline some of the key distinctions briefly.

Trafficking is a crime against an individual; the purpose is to exploit a person, including sexually or through forced labour or slavery-like practices. Trafficked persons are always victims that never consent to the intended exploitation.

Trafficking, like slavery, can occur within the borders of a state though most detected cases of trafficking in persons involve crossing international borders. Between 2012-2014 there were 63,000 victims reported in 106 countries. This is believed to be a fraction of the actual number of victims – who are often unable or unwilling to report the crime to the authorities for fear of deportation or inadequate protection.

Today most detected victims are women and girls trafficked for sexual exploitation. However, the number of detected cases of men being trafficked, primarily for forced labour purposes, is increasing.

Now allow me turn to smuggling...

Smuggling of persons is essentially an offence against the state rather than the individual, although it can be accompanied by an offence against the person smuggled, - such as fraud, assault or even homicide.

Smuggling is the facilitation, for financial or material gain, of irregular entry of a person who is not a national or a legal resident of the state. The profit from this crime is related to the facilitation of passage rather than the exploitation of the individual, in contrast to the crime of trafficking.

There is a wide-spectrum of smuggling activities. I am appalled, as I'm sure you are, by reports of migrants' lives endangered by unscrupulous smugglers - forced to travel below deck in overcrowded smuggling vessels, thrown overboard during voyage, or abandoned to die in deserts or in the holds of trucks without food or water.

Smuggled migrants are not only in an unequal power relationship with smugglers but can also be subjected to extortion and abuse by other actors, including border authorities or police officers, seeking bribes or a share of the profits generated from the smuggling. They can also be adversely affected, sometime severely, by border control measures, such as dangerous interception practices at sea.

However, it is important to note that the Smuggling of Migrants Protocol criminalizes only those acts of smuggling that are carried out for a financial or other material gain.

Persons who provide life-saving assistance to migrants and refugees for humanitarian reasons or based on close family ties, as opposed to profit or material gain, should not be the subject of criminal prosecutions.

This year alone, more than 3,400 individuals are estimated to have lost their lives along migratory routes worldwide, with countless more rescued. This is a clear indication that humanitarian assistance, including rescue at sea, remains as crucial as ever. Saving lives must be the absolute priority, along with better international coordination and cooperation to address smuggling and trafficking.

Protecting victims of trafficking and victimized smuggled migrants requires first that they be properly identified. This can be difficult and resource-intensive, particularly as such individuals are often unable or unwilling to seek protection due to fear of retaliation by criminal networks or of deportation due to their irregular status.

It is therefore crucial that states increase the capacity of front-line responders and authorities to pro-actively detect, identify, protect and assist victims, particularly in places such as reception centres.

States should tailor special measures for trafficking victims and migrants victimized by smugglers such as safe accommodation, medical and psychological support, access to justice, as well as temporary or even permanent residency and work permits, when appropriate, and integration opportunities. The provision of assistance and regularization of stay should not be dependent on cooperation with law enforcement as this may constitute an unacceptable form of coercion for those fearing retaliation against themselves or their families abroad.

As women make up half of those smuggled, gender responsive interventions are vital. Needless to say, appropriate measures are always required for the protection of child migrants.

As to prevention, evidence has shown that broadly criminalizing irregular migration may be counterproductive, creating barriers for migrants attempting to reach safety and dignity and thus compelling them to resort to smugglers. It is best to maintain the distinction between unauthorized entry and smuggling, and to treat irregular entry as an administrative rather than a criminal offence. Labelling and treating irregular migrants as criminals has no impact on migrant smuggling and unduly stigmatizes migrants, fuelling prejudicial and xenophobic attitudes towards them.

Law enforcement has an important preventive role to play. Prevention should target, through inter-state cooperation, the dismantling of organized criminal networks engaging in smuggling for profit and networks of traffickers engaged in exploitation. Yet, such measures are unlikely alone to prevent, deter or stop irregular migration or the smuggling of migrants. They should equally be assessed in light of the factors that compel migrants to resort to smugglers and the impact they might have individuals. The safety and dignity of migrants should be placed at the centre of counter-smuggling measures.

Over the longer term, the lack of regular migration channels, high visa fees, lengthy bureaucratic procedures and increasingly restrictive entry requirements, combined with the demand for cheap labour and services in countries of destination, particularly in informal or poorly regulated labour markets, will continue to channel migrants towards irregular entry, including through engaging the services of smugglers.

In other words, and most importantly, effective preventive measures require that states consider first and foremost, policies that will reduce recourse to irregular migration channels.

Focussing primarily on the methods of unauthorized entry will not be sufficient to undercut the demand for smugglers and prevent situations which facilitate exploitation.

I hope the discussion in the next two days will stimulate our thinking on how the global compact for safe, orderly and regular migration can help the international community address these issues.

Thank you