

SUMMARY PANEL: Synopsis of the main conclusions and outcomes

REPORT OF THE THEMATIC EXPERT

Global compact for safe, orderly and regular migration

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Fifth 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”, Vienna, Austria, 4 and 5 September, 2017.

Links and overlaps between trafficking and smuggling

1. The session addresses both smuggling of migrants and trafficking in persons. While participants affirmed the importance of upholding the legal distinction between these two crimes, there was agreement that, **in practice, trafficking and migrant smuggling overlap** - with smuggled migrants being subject to severe exploitation including through forced labour, extortion and sexual enslavement. The common link between these two concepts is: *exploitation in migration*.

2. These **links need to be better recognised**. Failing to identify victims of trafficking who have been smuggled denies those persons the rights to which they are entitled. These failures also perpetuate the impunity of exploiters.

3. In summary: any new approach to migration **must maintain the legal, definitional distinctions between trafficking and smuggling as a means of developing targeted responses, but ensure that any distinctions make sense in addressing real-world complexity**, including by ensuring that the interplay is not manipulated and confused by political agendas.

In specific relation to migrant smuggling

4. It is necessary to acknowledge, upfront, that **States have a sovereign right to manage migration into their territory**. This right is, however, subject to the rules of international law, including rules that relate to human rights and asylum. Responses to migrant smuggling must also respect human rights and humanitarian law.

5. There are serious **deficiencies in our evidence base around smuggling**. We have some good data, and there are a few promising initiatives, but overall, we still know too little about what is happening; how it is happening and who is involved. This is preventing the development of effective interventions. We urgently need to improve data collection and research around migrant smuggling. Collaborative approaches and a commitment to sharing information are both critical.

6. When considering how to respond to migrant smuggling, it is important to acknowledge that **many people trying to escape persecution are compelled to turn to smugglers**. This creates a real policy dilemma that we must confront. At the very least it underscores the need to ensure that migrants are *never criminalised* for using the services of smugglers; and that **those facilitating irregular migration for humanitarian purposes** are not criminalised.

In specific relation to trafficking in persons

7. There is general agreement that **much has been achieved**. We have a strong legal framework – as well as a shared understanding of the problem and what needs to be done. At the national, regional and international levels we have seen great progress, and in a short period of time.

8. We have also seen **real innovation**: for example: efforts to involve and regulate the business community; to improve data and research around trafficking; to prevent trafficking by addressing demand for the goods and services produced through exploitation.

9. However the session has made clear that **much remains to be done**. The reality is that:

- Only a tiny percentage of victims are ever identified, particularly among migrants;
- Migrants who do fall victim to trafficking or other forms of exploitation face considerable barriers to accessing protection and assistance, particularly where they are in irregular situations;
- Even fewer are provided with adequate and appropriate protection and support, including access to justice and the right to remain in country;
- Almost none receive any kind of meaningful remedy for the harms committed against them;
- The number of prosecutions and convictions for trafficking cases remains very low, which means that most exploiters are getting away with their crimes; and
- We are seeing a growing link between trafficking and conflict: traffickers are taking full advantage of political, social and economic breakdown to exploit the most vulnerable.

10. There is a **need for action at all levels**:

- **States**: must work to better implement their legal commitments, including those under the Trafficking and Migrant Smuggling Protocols. This requires strong political leadership; coordination within and between countries; and a commitment to victim-centred approaches.
- **The international community**: can do more to coordinate its approach to trafficking: the multiplicity of initiatives reflects a positive energy but we must be cautious that this does not result in a dilution of effort and impact.

11. All actions and responses to trafficking, particularly at the level of policy, must be **guided and informed by the international legal framework**. This is the foundation on which everything else must be built. We are fortunate in having such strong and clear rules and we must resist all efforts to marginalise them. The same can be said for **definitions**: we have strong legal definitions, especially in relation to *trafficking* and *forced labour*. There may be good strategic

reasons to use more casual language such as *modern slavery* but such terms should not distract from what we have enshrined in law, or detract from efforts to implement it.

12. We must also be brave in **tackling the underlying factors** that perpetuate the exploitation of human beings for private profit.

- We must confront the strong and increasing **demand** for goods and services produced through exploitation;
- We must admit that current **migration regimes** can exacerbate vulnerability to trafficking and related exploitation;
- We must accept that **corruption**, in all its guises, fuels trafficking and perpetuates the impunity of traffickers;
- We must acknowledge that lack of decent work and labour rights increase vulnerability to trafficking and related exploitation; and
- We must acknowledge that **poverty, inequality and discrimination** disempower individuals and communities – increasing their vulnerability to exploitation, underlining the need for us to take a good, hard look and have honest conversations about how exploitation is a logical outcome of existing economic models.

Some concluding remarks

13. **Addressing demand** will include a definition of demand which must be expansively understood to **include demand for a trafficking victim’s sexual exploitation, labour or services**. In effect demand for labour that is exploitative or services which breach the human rights of the person delivering those services. The importance of bilateral and international cooperation in discouraging the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking has been for example underscored in article 9 of the Trafficking Protocol.

14. **Prevention** should address amongst others the **root causes of trafficking and irregular migration**; the demand for exploitative commercial sexual services and exploitative labour; increasing opportunities for safe migration. Importantly, prevention measures should target awareness raising about the risks associated with trafficking and migrant smuggling and strengthening the **capacity of law enforcement agencies** to detect, arrest, investigate and **prosecute traffickers and smugglers**.

15. Notwithstanding, there is need for States and other actors to ensure that anti-trafficking measures do not adversely affect the human rights and dignity of persons, in particular the rights of those who have been **trafficked, migrants, internally displaced persons, refugees and asylum seekers and people affected by conflict**.

16. **States** should **actively monitor** the impact and possible side effects of measures to discourage demand and take appropriate action to address any unintended side effects which restrict the exercise of human rights.
17. As **States, leaders and stakeholders** work to develop a global compact for safe, orderly and regular migration there is the need to address the demand for exploitable labour and services translates into the need to create more **opportunities for “safe” migration, that is, legal, gainful and non-exploitative migration**. Strategies to address the demand and prevent migrant smuggling and trafficking should be guided by the recognition of the continuing demand for low- or semi-skilled labour and the promotion of opportunities for regular labour migration, as well as **States’ obligations to respect, protect and promote the labour rights of all workers, including migrants**.
18. However, there are overwhelming concerns that **States over politicize migration**, construct and operationalize the concept of safe migration within the framework of the protection of national sovereignty and border security thereby exacerbating xenophobia, restricting avenues for safe migration resulting in dangerous and catastrophic consequences. Hence, measures to ostensibly promote safe migration and prevent trafficking tend to discourage migration altogether in violation of the right to freedom of movement. Increasingly viewing migration as historically a positive force and from a development paradigm as an essential marker of globalization and consumerism will benefit the world in pursuit of sustainable development as encapsulated in **SDGs 2030 agenda**. The time is now I hear from all of us going forward to move beyond destructive politics to action that will give the world **pathways for safe, beneficial and non-exploitative migration**.

Final Concluding points:

19. We need a strong **human rights-based approach to exploitation in migration**. Such an approach ensures, at a minimum, that responses to trafficking and smuggling ***do no harm***.

20. From a practical perspective, a human rights-based approach is ***normatively based*** on international human rights standards and that is ***operationally directed*** to promoting and protecting human rights.

- As policies and programs are formulated – including the Global Compact on Migration, ***their main objective should be to promote and protect rights***;
- A human rights-based approach identifies *rights-holders* (for example trafficked persons or migrants at risk of being exploited or harmed) and the corresponding *duty-bearers* (usually States);

- A human rights-based approach works towards *strengthening the capacities of rights-holders to secure their rights and of duty-bearers to meet their obligations.*

21. I conclude by encouraging all stakeholders working on the Global Compact - States, intergovernmental organizations and civil society groups – to be clear in our **absolute rejection of exploitation in migration.** I urge you to affirm an unqualified commitment to human rights and the rule of law; and willingness to work tougher towards a world in which migration is non-exploitative, safe and beneficial for all.