

International Protocols for Human Trafficking and Smuggling

Concept: International Protocols for Human Trafficking and Smuggling

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Description The International Convention on Transnational and Organized Crime in Palermo Sicily (2000) led to the development of a Human Trafficking Protocol (*Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children*) and a Human Smuggling Protocol (*Protocol Against the Smuggling of Migrants by Land, Sea, and Air*). This Convention was notable for bringing a human rights dimension to the issues of smuggling and trafficking and for providing a useful starting point to rethink these issues beyond law enforcement.

Both human smuggling and trafficking are forms of "irregular migration" (that is, migration that occurs outside the legal channels offered by some, but not all, nation-states). Individuals who are smuggled or trafficked are of diverse backgrounds and include: political refugees, individuals fleeing war and conflict, and economic migrants seeking a better life. Importantly, irregular migration is a phenomenon on the rise and one that is coupled with increased legal efforts of industrialized countries to control it. Irregular migration is a direct consequence of an increasingly connected world where the movement of people is made easier.

The protocols established in Palermo distinguish "smuggling" from "trafficking" and attempt to recognize the dangers associated with the increasing phenomenon of irregular migration. Smuggling is defined as the movement of migrants through illegal channels, whereas trafficking is defined as the transport of individuals for the purpose of exploitation (for example, for forced labour or the sex industry). The Protocol for Human Trafficking explicitly stipulates that the individual must have been "coerced." Nonetheless, the Protocol defines "coercion" in broad terms as "the abuse of a position of vulnerability." Both protocols stipulate that it is the smuggler and trafficker who should be prosecuted and not the irregular migrant.

This distinction between smuggling and trafficking has distinct consequences for the protections afforded to irregular migrants. Simply stated, the Convention establishes that individuals who choose to migrate through irregular means (individuals choosing to be smuggled) are less deserving of protection than those who do not (individuals who are trafficked). Given these definitions, being classified as "smuggled" or "trafficked" has serious consequences for access to human rights protections — with more rights being given to those falling into the latter category. Importantly, however, the Protocols have provided a starting

point to consider issues of human rights and justice, rather than only law enforcement and border security, in order to respond to an increasing global phenomenon of irregular migration.

Given the severe and obvious human rights violations in the area of human trafficking, the need to develop national and international strategies to curtail this particular danger associated with irregular migration has received considerable global attention. The International Organization for Migration (IOM) describes human trafficking as one of the most serious challenges facing policy-makers. Nonetheless, it is difficult to get a sense of how extensive human trafficking is. Often, victims are intimidated by traffickers and are unwilling to seek prosecution. Also, they are illegal migrants in the countries in which they find themselves and therefore fear deportation or criminal prosecution themselves. Some examples of exploitation that characterize human trafficking (as defined in the Protocol) include: "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." Human smuggling, however, can also have negative consequences, as evident in the discovery of migrants that have suffocated in truck and ship compartments, or drowned in unsafe vessels.

The dominance of organized crime networks in facilitating human smuggling and trafficking means that victims — particularly victims of human trafficking — can become locked in cycles of violence, coercion, and abuse. Given the massive human rights consequences of irregular migration, there are important considerations for individual autonomy. Not the least of these is that irregular migrants lack any formal legal standing from which to exercise or protect their rights. In short, individual autonomy does not exist in the transnational space of irregular migration, with the one exception being the small number of migrants who are able to successfully mount claims to refugee status.