

Perceived involvement of “organised crime” in human trafficking and smuggling

G. VERMEULEN, Y. VAN DAMME, W. DE BONDT

[Abstract]

In order to develop an effective criminal justice response, it is crucial to truly understand the phenomena at hand. The analysis of the two phenomena singled out for this contribution – namely trafficking in persons and smuggling of migrants – will be focussed at trying to understand the nature and extent of the involvement of organised criminal groups therein.

To that end, this article explores what we know, what we do not know and what we should know about the involvement of organised criminal groups in trafficking in persons and smuggling of migrants. The relationship between organised crime and trafficking in persons, and the relationship between organised crime and smuggling of migrants, is taken into consideration on a multitude of levels. Additionally, serving as a significant counter-weight for organised involvement, it is stressed that a significant role is reserved for un-organised criminality in these phenomena. Because of its importance, this aspect is equally explored and its consequences for criminal justice responses are analysed. On the basis of the findings of enormous variety in criminal involvement in both trafficking in persons and smuggling of migrants, criminal justice responses are in high need of re-consideration.

1 Introduction

To spark debate at the 12th Annual UN Crime Congress, held in Brazil in April 2010, UNODC tasked the Institute for International Research on Criminal Policy (IRCP)¹, to analyse the links between transnational organised crime and trafficking and smuggling. Because developing appropriate criminal justice responses to combat trafficking in persons and smuggling of migrants as forms of organised crime requires a knowledge-based response, the main objective of this exercise was to provide insight and up-to-date information on what is known on the involvement of organised crime in trafficking and smuggling today.²

¹ IRCP is based within the Department of Criminal Law and Criminology, directed respectively headed by Prof. Dr. Gert Vermeulen, Ghent University (Belgium).

² The full report of the study was published as Vermeulen G., Van Damme Y., De Bondt W., “Organised crime involvement in trafficking in persons and smuggling in migrants”, Maklu, Antwerpen-Apeldoorn-Portland, 2010, 112

As quickly became clear from the onset of the study, the evidence-base for criminal involvement in these phenomena today is still woefully inadequate.

From the limited amount of evidence-based data available and from significant input from experts active in the field of these phenomena, a twofold conclusion can be drawn. It can be concluded that not only does there exist an enormous diversity in the landscape of organised criminal involvement in both phenomena but also there is an enormous diversity as to the different types of actors active in these markets. The actors involved may be organised criminal groups, individual traffickers or smugglers, or even friends and family or trafficking victims. Individual criminality and involvement of social networks of migrants and trafficking victims should be considered a significant counter-weight for the dominance of criminal groups in the people-market.

The single most important factor in the entire exploration of the links between organised crime, trafficking in persons and smuggling of migrants, is profit. The reason for today's lack of a prototype of an organised criminal group, most likely to be involved in trafficking or smuggling, is that any thinkable scenario is possible, as long as the scenario results in the highest possible profit for the criminal activity. This makes organised involvement in trafficking in persons and smuggling of migrants an "anything goes"-story, which entails significant consequences for criminal justice.

2 Legal Framework

The first step of any kind of research is to get the concepts straight. Even though well-known and globally accepted the UN definitions of "organised criminal group", "trafficking in persons" and "smuggling of migrants" exist, it is important to re-emphasise them in order to fully grasp the line of argumentation. Furthermore, attention should be paid to their interrelation because this impacts on the application of the definitions.

First, the definition of an "organised criminal group" should be recalled. The main international instrument in the fight against transnational organised crime is the United Nations Convention against Transnational Organised Crime (hereafter UNTOC), adopted by General Assembly resolution 55/25 of 15 November 2000, and entered into force on 29 September 2003.

The UNTOC defines an organised criminal group as follows:

"Organised criminal group" shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit."

Second, the definition of "trafficking in persons" should be recalled. UNTOC is supplemented by the Protocol to Prevent, Suppress and Punish Trafficking in

Persons, Especially Women and Children (hereafter “Trafficking Protocol”);³ The Trafficking Protocol was adopted by General Assembly resolution 55/25 and entered into force on 25 December 2003. It is the first global legally binding instrument with an agreed definition on trafficking in persons;

“Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, 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”

Third, the definition of “smuggling of migrants” should be recalled. UNTOC is also supplemented by a Protocol against the Smuggling of Migrants by Land, Sea and Air (hereafter “Smuggling Protocol”); The Smuggling Protocol was adopted by General Assembly resolution 55/25 and entered into force on 28 January 2004. It deals with the growing problem of organised criminal groups who smuggle migrants, often at high risk to the migrants and at great profit for the offenders. A major achievement of the Protocol was that, for the first time in a global international instrument, a definition of smuggling of migrants was developed and agreed upon;

“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.”

In light of the latter definition, it is important to re-stress the differences between smuggling of migrants and trafficking of persons, as they appear to still be confused, inter-used and miss-used. This happens mainly because of the similarities and partial overlap between both phenomena. Despite common elements, the differences between both criminal activities under discussion are crucial when developing appropriate national, regional and international responses. Firstly, the smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers. Secondly, smuggling ends with the arrival of the migrants at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers. Thirdly, smuggling is always transnational, whereas trafficking need not be. Trafficking can occur regardless

of whether victims are taken to another country or only moved from one place to another within the same country. For the above mentioned reasons, both phenomena should not be analysed as together forming one overarching phenomena of “people trade”. Therefore, these phenomena should be systematically separated, even if the findings proved to be very similar.

Fourth, it is important to emphasise that even though these Protocols supplement the UNTOC, does not mean that the entire scope of the Protocols is strictly limited situations entailing a transnational element or involving an organised criminal group. Art. 34.2 UNTOC elaborates on the extent to which the scope of these protocols is independent from their mother convention. The protocols are disconnected from UNTOC with regard to the constituent elements of the behaviour to be criminalised. Art.34.2 UNTOC notes that the involvement of an organised criminal group and the transnational element are not constitutive elements for criminalisation on a national level. When applying this provision to the Trafficking and Smuggling Protocols, this means that for trafficking, neither transnationality nor the organised character may be inserted as constitutive elements. Considering the essential transnational nature of smuggling, this means that the organised character may not be inserted as a constitutive element of smuggling.

However, it is important to note in this respect that no such provision exists for other capital elements of criminal justice responses to trafficking in persons and smuggling of migrants besides criminalisation on a domestic level. Even though the UN Convention provides a legal framework for international cooperation to combat these crimes, the transnational and organised elements are logically constitutive elements needed for cooperation in this respect. Also, article 4 of both the Trafficking and the Smuggling of Migrants Protocol note that :

“the Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 6 of this Protocol, where the offences are transnational in nature and involve an organised criminal group, as well as to the protection of the rights of persons who have been the object of such offences”

In other words, unless otherwise stated as is the case with criminalisation, a transnational and organised element is required.

3 The lack of evidence-based data

Having clarified the legal basis and the scope of the phenomena at stake, it becomes interesting to first assess the existing knowledge on the individual phenomena, before engaging in an analysis of the knowledge on the organised crime involvement in trafficking and the organised crime involvement in smuggling.

Analysis reveals that three main stumbling blocks cause the lack of evidence-based data:

- (1) A lack of empirical support for assertions made
- (2) A lack of common language
- (3) A lack of sufficient geographically spread data

3.1 Lack of empirical support

The first major stumbling block is the lack of empirical data generally available but also the lack of empirical support for assertions made in scientific research reports.

Over the last few years an increasing amount of attention has been paid to the phenomena of organised crime, trafficking and smuggling. The result of this increased attention is an enormous collection of scientific articles, global reports, national reports, reports by NGO's and books on either one or more of the three concepts.

However, in spite of increasing attention, there is still little reliable knowledge on any of the three phenomena researched.⁴ Furthermore, the limited understanding is often prejudiced because of the weak empirical basis provided.

Existing literature often entails claims about the organised crime involvement in trafficking in persons and smuggling of migrants, without providing sufficient supporting evidence. Organised crime is often 'assumed' to be involved in trafficking in persons and smuggling of migrants. Many texts fail to make reference to any documentation for these claims offered.⁵ Often, there is no sign of a methodology that shows how particular questions were researched and how these conclusions could have logically been drawn.⁶

Specifically for quantitative data, a lot of undocumented, broad estimates of the scale of involvement of transnational organised criminal groups in trafficking in persons or smuggling of migrants are offered.⁷ It is however

⁴ Bruckert, C. (2002), *Trafficking In Human Beings and Organised Crime, A Literature Review*, Ottawa, Royal Canadian Mounted Police; Kangaspunta, K. (2003), "Mapping the Inhuman Trade, Preliminary Findings of the Database on Human Trafficking", *Forum on Crime and Society*, vol. 3, Nos. 1 and 2, December 2003; Goździak, E. and Bump, M. (2008), *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Institute for the Study of International Migration, Walsh School of Foreign Service, Georgetown University, prepared for The National Institute of Justice; Goodey, J. (2008), "Human Trafficking: Sketchy data and policy responses", *Criminology and Criminal Justice*, 8: 421-442

⁵ see also Heckmann F. (2004), "Illegal Migration: What Can We Know and What Can We Explain? The Case of Germany", *International Migration Review*, vol. 38 n° 3, 1103-1125

⁶ see also Goździak, E. and Bump, M. (2008), *Data and Research on Human Trafficking: Bibliography of Research-Based Literature*, Institute for the Study of International Migration, Walsh School of Foreign Service, Georgetown University, prepared for The National Institute of Justice

⁷ see also see also Bruckert, C. (2002), *Trafficking In Human Beings and Organised Crime, A Literature Review*, Ottawa, Royal Canadian Mounted Police; Laczko, F. (2002), "Human trafficking: the need for better data", *Migration Information Source, Data Insights*, Washington D.C., Migration Policy Institute; Kaizen, J. and Nonnema W. (2007), "Irregular Migration in Belgium and Organised Crime: An overview", *International Migration*, vol. 45, n° 2, 121-146;

accepted in a lot of the considered literature that measurements of the exact scale of the phenomena and of the involvement of transnational organised criminal groups in them, can never be more than rough estimates because of the underground nature of the business.⁸

The lack of sufficient documentation in the vast majority of sources links in with the general limited availability of reliable quantitative data on organised crime, trafficking in persons and smuggling of migrants, on the reliable data on the links between them or on cross-national comparison thereof. This lack has a double origin. First the lack of common language between the actors in the field complicates data comparison. Second, the limited availability of adequately geographically spread information hampers meaningful international analysis.

3.2 Lack of common language

The second major stumbling block is the lack of common language. In spite of UN-level concepts of organised crime, trafficking and smuggling, there is still a lack of common language. There are various elements that contribute to this lack, of which two are considered most crucial: first the consequences of national implementation and second the consequences of the development of individual working definitions.

3.2.1 National implementation

First, international instruments – be it UN or others – do not replace national provisions. Therefore the commonly agreed definitions need to be reflected in national legislation. Working with agreed minimum definitions leaves States significant discretion how to nationally reflect the common minima. Some states introduced separate offences to reflect the commonly agreed concepts; others include the requirements in an existing national definition. Furthermore, states can also opt to criminalise organised crime via the introduction of aggravating circumstances, as opposed to regarding it as a separate offence.⁹

Goodey, J. (2008), "Human Trafficking: Sketchy data and policy responses", *Criminology and Criminal Justice*, 8: 421-442

⁸ Salt, J. (2000), "Trafficking and Human Smuggling: A European Perspective",

International Migration Vol. 38, No. 3, 31-56; Heckmann F. (2004), "Illegal Migration: What Can We Know and What Can We Explain? The Case of Germany", *International Migration Review*, vol. 38 n° 3, 1103-1125; Goździak, E. and Collett, E. (2005), "Research on human trafficking in North America: A review of literature", *International Migration* 43(1/2): 99-128; Jandl, M., Vogel, D. and Iglia K. (2008): "Report on methodological issues", Research Paper, CLANDESTINO Undocumented Migration: Counting the Uncountable, November 2008, available at: <http://clandestino.eliamap.gr/>; Schloenhardt, A. (2008), *Trafficking in Persons in Australia, Myths and Realities*, Paper presented at The University of Queensland Brisbane (Qld), September 22, 2008

⁹ Bevers, J. A. C. (2001), "The Emerging System of International Criminal Law. Developments in Codification and Implementation." *European Journal of Crime, Criminal Law and Criminal Justice* 2001, 9 (2), p 159-165; Borgers, M. J. (2007), "Implementing framework decisions." *Common Market Law Review* 2007, 44, p 1361-1386; Calderoni, F. (2008), "A Definition that

This complex process of national implementation is further influenced by competing provisions in different international instruments. There are different cooperation levels at which states try to tackle organised crime, trafficking in persons and smuggling of migrants. It should be stressed that State initiatives to reflect commonly agreed minima on organised crime, trafficking in persons and smuggling of migrants into national legislation, are not only based on the UN instrumentarium. State initiatives are also influenced by obligations arising from other instruments. Member states of the European Union for instance have to balance the criminalisation obligations in the UN instruments, with obligations arising from Council of Europe instruments and obligations arising from EU instruments.

Firstly, the concept of organised criminal group as elaborated in the UNTOC does not match perfectly with the concept thereof in the 2008 Framework Decision 2008/841/JHA on the fight against organised crime. The UN concept defines an organised criminal group as a structured group of three or more people, whereas the EU concept refers to a group of two or more people. The UN criminalisation of participation in an organised criminal group includes participation to the non-criminal activities whereas this is not included in the EU concept.¹⁰ Secondly and similarly, the UN concept of trafficking in persons does not match perfectly with the EU concept of trafficking in human beings. Thirdly, the same is true for the concepts related to smuggling of migrants. As a consequence, national legislation on these phenomena is highly diverse, which complicates cross-national comparison.

3.2.2 *Development of working definitions*

Second, different actors in the fight against crime develop their own working definitions and data models. Police data models are well known to have more phenomenological indicators that do not necessarily reflect the constituent elements in the national criminal legislation.¹¹ Furthermore, victim support

Could not Work: the EU framework Decision on the Fight against Organised Crime." *European Journal of Crime, Criminal Law and Criminal Justice* 2008, 16, p 265-282

¹⁰ see also Vermeulen, G. and De Bondt, W. (2009), *Eulocs. The EU level offence classification system : a bench-mark for enhanced internal coherence of the EU's criminal policy*, Antwerp - Apeldoorn - Portland, Maklu, 212 p

¹¹ Killias, M. and Rau, W. (2000), "The European Sourcebook of Crime and Criminal Justice Statistics: A New Tool in Assessing Crime and Policy Issues in Comparative and Empirical Perspective." *European Journal on Criminal Policy and Research* 2000, 8, p 3-12; Aebi, M., Killias, M. and Tavares, C. (2002), "Comparing Crime Rates: the International Crime (Victim) Survey, the European Sourcebook of Crime and Criminal Justice Statistics and Interpol Statistics." *International Journal of Comparative Criminology* 2002, 2 (1), p 22-37; Aebi, M., Killias, M., Aromaa, K., Aubusson De Cavarlay, B., Barclay, G., Gruszczynska, B., Von Hofer, H., Hysi, V., Jehle, J.-M., Smit, P. and Tavares, C. (2006), *The European Sourcebook of Crime and Criminal Justice Statistics – 2006*. Den Haag, WODC, 174 p; Rubin, M. M., Culp, R., Mameli, P. and Walker, M. (2008), "Using Cross-National Studies to Illuminate the Crime Problem: One Less Data Source Left Standing." *Journal of Contemporary Criminal Justice* 2008, 24, p 50-68; Vermeulen, G. and Paterson, N. (2010), *The MONTRASEC demo. A bench-mark for member state and EU automated data collection and reporting on trafficking in human beings and sexual exploitation of children*, Antwerp-Apeldoorn- Portland, Maklu, 156 p

organisations develop their own working definitions, based on their mandate and objectives. Therefore it is difficult to integrate data from different sources, even though they would complement each other and undoubtedly provided a valuable insight into the crime phenomena in support of the criminal justice response. Besides the differences in the concepts, significant differences exist in reporting mechanisms and counting rules, which make national integration hard, let alone allow reliable cross-national comparisons.¹² Consequently, considering the poor availability of reliable data on organised crime, trafficking in persons and smuggling of migrants as individual offences, it becomes clear that reliable data on organised crime involvement in trafficking in persons or organised crime involvement in smuggling of migrants is even more scant.

3.3 Lack of geographical balance

The third major stumbling block is the geographical imbalance in the available data. Reliable cross-national data is important to be able to conduct meaningful in-depth comparative analysis capable of supporting evidence-based policy making. Besides high level overviews, cross-national analysis on key aspects of the phenomena is necessary. This kind of analysis presupposes the availability of reliable data from specific countries. There is a specific interest in countries of origin and destination, but also in data from transit countries, and countries that appear in the operating routes.

However, in addition to the poor availability in general, there is a huge geographical imbalance in data availability. Considering the different political priorities and technical capacity between various countries, it comes as no surprise that valuable information on organised crime involvement in trafficking in persons or smuggling of migrants, relates to more developed countries. There is a huge difference in the amount of valuable information coming from Africa compared to Europe. The few sources that do offer data involving less developed countries are likely to come from an international organisation. This obviously further complicates meaningful cross-country/cross-continent comparisons on which to draw meaningful conclusions on the global occurrence of organised crime in trafficking in persons and/or smuggling of migrants.

3.4 Conclusion

In spite of the efforts seen over the past years, the availability of data is still saddening. The three main stumbling blocks elaborated on are the main causes thereof. Nevertheless, it is important to use the little data available to its full potential. A good (i.e. as good as possible) understanding remains of vital

¹² Aebi, M., Killias, M. and Tavares, C. (2002), "Comparing Crime Rates: the International Crime (Victim) Survey, the European Sourcebook of Crime and Criminal Justice Statistics and Interpol Statistics." *International Journal of Comparative Criminology* 2002, 2 (1), p 22-; Mennens, A., De Wever, W., Dalamanga, A., Kalamara, A., Kaslauskaitė, G., Vermeulen, G. and De Bondt, W. (2009), *Developing an EU level offence classification system: EU study to implement the Action Plan to measure crime and criminal justice*, Antwerp-Apeldoorn-Portland, Maklu, 214 p; Robert, P. (2009), *Comparing Crime Data in Europe. Official crime statistics and survey based data*, Brussels, VUBPress, 146 p

importance to provide policy makers with the basis needed to develop effective criminal justice responses.

4 Typology of organised crime involvement

In the past, responses to trafficking and smuggling have focused mainly on the (perceived) involvement of organized criminal groups. The following paragraphs provide a high level overview of the typology of these organized criminal groups, relevant for the development of an effective criminal justice response.

4.1 Hierarchical structures

When discussing organised crime, first thoughts go to the Italian and Russian Mafia, the Japanese Yakuza, and other sometimes even glorified hierarchical gangs, operating along the lines of codes of honours, family and clan ties, the vow of secrecy, Omerta, inter- and intra-group violence and murder. There is no doubt that these kinds of hierarchically structured groups existed in the past, still do today, and will remain to exist in the future. The question at hand is however, if these kinds of organised crime groups are currently involved in trafficking and smuggling. The answer to that question is not as self-evident as often perceived. Considering the distinct features of trafficking and smuggling, analysis of the involvement of hierarchically organized criminal groups should be accordingly.

4.1.1 *Trafficking in persons*

The picture presented of trafficking in persons and the involvement of mafia-like hierarchical structures, is often one-sided.

However, when thoroughly researching this particular topic and trying to find an answer on whether or not these kinds of organised crime groups are involved in trafficking in persons, irrefutable evidence is hard to find. Furthermore, different sources of information are contradictory. Definitive and evidence-based conclusions on the involvement of hierarchically organised, mafia-like organised crime groups in trafficking in persons are therefore hard to draw.

4.1.2 *Smuggling of Migrants*

Similarly, an evidence-based answer for the involvement of hierarchically organized criminal groups in smuggling is equally hard to draw. Some experts asserted that the hierarchical organised crime groups of the 90's involved in smuggling drugs, weapons, stolen cars, etc. have now also turned to smuggling migrants because of the possible profits that can be made from it. To these groups, it does not matter what they load on trucks, ships or aircrafts, as long as it is profitable.

However, there exists a general consensus that the large majority of criminal groups involved in smuggling of migrants today are not proven to be very hierarchically structured (anymore).¹³ However, as was the case for trafficking in persons, some opinions and documentation to the contrary exists.¹⁴ This again makes it difficult to definitively conclude upon the involvement of mafia-like hierarchical groups in smuggling of migrants.

These undecided conclusions fit in perfectly with the above expressed findings of the huge lack of an evidence-base for this kind of research.

4.2 The involvement of criminal networks

Today, most organised crime groups involved in trafficking consist of loosely connected people. Together they form a trafficking or smuggling “network”.

Before going into the distinct features of trafficking networks as opposed to smuggling networks, two general features of any kind of network can be singled out. The following extracts from expert interviews illustrate that networks are structured along different functions and that there is limited “intra-network” contact among the different actors involved.

Each node in a network consists of a specific function of the operation and is usually completed by a specialist who is not involved in anything else than this particular function.

(Extract from expert interview)

The people involved in this trafficking network do not necessarily even know each other; it is more likely that only the directly connected people have contact with each other without knowing who else is part of the “team”. [...] All the people involved go about their own business and get their own share of profit from their own activity.

(Extract from expert interview)

Interaction between nodes of the network can be compared to business-relations in that everything is aimed at profit maximisation. This explains why at times one single specialist is active in several networks. It also explains why several people in the network (or even all people for that matter), do all jobs together. This last situation may be the case for smaller-scale networks, mostly consisting of members from the same nationality. These networks are structured like any other legitimate business, and every form, size, cooperation between networks, is thinkable as long as it is the way to maximise profit. According to the UN definition, these networks are organised crime groups. This is the case as

¹³ see for example İçduygu, A. and Toktas, S. (2002), “How do Smuggling and Trafficking Operate via Irregular Border Crossings in the Middle East? Evidence from Fieldwork in Turkey”, *International Migration*, Vol. 40, Issue 6: 25 – 54; Heckmann F. (2004), “Illegal Migration: What Can We Know and What Can We Explain? The Case of Germany”, *International Migration Review*, vol. 38 n° 3, 1103-1125

¹⁴ see for example UNODC (2002), *Result of a Pilot Survey of Forty Selected Organised Criminal Groups in Sixteen Countries*, Vienna, United Nations Office on Drugs and Crime

soon as three or more people are involved, even if they do not know each other and even if they are separated by continents, as is often the case in large criminal networks.

To offer a clear view on how these networks operate and how connections between different specialists can ultimately lead to successful trafficking in persons or smuggling of migrants-operations, an overview of the possible different functions in these networks is offered. This kind of overview makes it easier to understand the entirety of trafficking and smuggling cases, which is something that is often missed when trafficking and smuggling cases are being processed through the criminal justice system.

Three comments are to be kept in mind when going through the specific features of trafficking and smuggling networks.

First the comparison with business-relations has clarified that it is not necessarily so that just one person per node is carrying out the corresponding activity. Sometimes, small groups carry out one function.

Second, each of the functions mentioned below can be completed by certain 'specialists', no matter who they are as long as they have the skills. In short, the essence of these networks is not the people involved in it as they can easily be replaced, but the different activities that ultimately constitute one trafficking operation.

Third, it is important to note that the overviews offered below are general overviews, of which many variations are possible in different networks.¹⁵

4.2.1 Trafficking in persons

Functions in the trafficking in persons-network	
Recruitment	The recruitment of trafficking victims can be undertaken by a wide range of people. It can be independent people, scouting for possible victims without having any connection to them. Examples of this form of recruitment are fake model agencies, so-called travel agents, bureaus that offer false job promises as nannies, labourers, au-pairs, etc. Recruiters can also be people from the victims' own community. People that they know or that they "know of" because they for example have good reputations as being able to provide work abroad. These could equally be people who own businesses in the victims' hometowns. This makes it easier for them to deceive their victims into believing that they can get them jobs in other businesses that are connected to their own elsewhere. Furthermore,

¹⁵ see also Chin K-I. and Zhang, S. (2004), "Characteristics of Chinese Human Smugglers", NiJ Research in Brief August 2004, Washington DC, U.S. Department of Justice, Office of Justice Programs; ILO-IPEC (2005). Child trafficking – the people involved: A synthesis of findings from Albania, Moldova, Romania and Ukraine. Geneva: ILO-IPEC; Monzini, P. (2001) "Trafficking in Women and Girls and the Involvement of Organised Crime, with Reference to the Situation in Central and Eastern Europe.", International Review of Victimology, Vol. 11, No.1, 73-88; Surtees, R. (2008), "Traffickers and Trafficking in Southern and Eastern Europe: Considering the Other Side of Human Trafficking", European Journal of Criminology 2008; 5; 39-68; Picarelli, J. (2009), "Organised Crime & Human Trafficking in the US & Western Europe", in Friesendorf, C. (ed), Strategies Against Human Trafficking The Role of the Security Sector, p 123-145, Geneva/Vienna, Centre for the Democratic Control of Armed Forces [DCAF] and Austrian National Defence Academy

Functions in the trafficking in persons-network	
	as explored above, people from the person's own social network can be involved in a trafficking network and abuse their established relationship to deceive their friends, relatives or acquaintances and to pass them on to the next node in the network.
Document forging/obtaining necessary documents	This node of the network constitutes of people that provide the necessary documents to facilitate journeys. They either have the right connections to corruptible migration officials or they have the skills to forge documents themselves. It is important to note that this is certainly not necessarily always a node in a trafficking network, as trafficking victims may have entered the destination country legally. The best example of this is trafficking in persons throughout member states of the EU.
Corruption/bribery	This node of the network constitutes of public officials who are bribed into facilitating illegal traffic. They can be border guards who allow illegal passing, embassy personnel that grants visas, police officers who let the network operate and close their eyes for what is happening before them, all for a sum of money.
Transport	The people responsible for transportation in the network are those who bring the victims from and to certain points before and after crossing borders, and in between possible places of exploitation. This can for example be a driver who takes a group of victims to the airport where they will board an airplane that takes them to the transit or destination countries. It can also be a driver who takes victims from the airport at arrival to the place where they will ultimately be exploited. This kind of function does not require a great specialism and therefore a fixed profile of a certain criminal involving himself in this function does not exist. This task can be fulfilled by anyone, certainly also by other members of the network who may already fulfil another task. For example, a guide as described in the following paragraph is often also the person responsible for the transport of trafficking victims.
Guiding/Illegal border crossing	Guides accompany the victims across borders, be it on foot, by boat or by any other means of transportation. They are specialists in finding weakly controlled border-points, or may know the right border guard who will allow the group to pass, of course for the right amount of bribe money. This means that the function of guiding and the function of obtaining needed documents are often intertwined, as can be the case for several different functions in a network. This particular task is only necessary when legal entry into the destination country is not possible.
Harbouring	Trafficking victims need a place to stay during their journey and during the time they are exploited. Mala fide landlords can for example rent out apartments to brothel owners or labour exploiters for them to be able to lock up their victims when they are not at work, thus keeping them hidden under the radar.
Enforcing	Trafficking victims need to be controlled and scared into complying with their exploitative situations. This is a role of for example bodyguards who watch victims' every moves and stay with them in the apartments they are possibly kept in. This can be the person who punishes the victims if they are disobedient, by means of violence. This can also be the person who goes and threatens or blackmail victims' relatives back home, all in order to gain further control over a victim.
Exploitation	This is the person or the persons that ultimately exploit the victims. This can be a brothel owner, a plantation owner, a child molester who bought the child, a doctor who steals victim's organs, etc. Victims can be traded and transferred between exploiters, with possible network-relations between different exploiters.

Functions in the trafficking in persons-network	
Money laundering	Profits that these networks make need to find entry into the legal sphere. Illegal proceedings need to be laundered. This is an essential part of the whole trafficking operation. In a more general sense, Surtees notes on the relation with the legitimate market; “traffickers mobilize a network based on effective collaboration and joint ventures with other criminal groups and with people in conventional positions, such as government employees, commercial lawyers, accountants, financial services experts and public notaries, all of whom may or may not be aware of the criminal nature of their activities”. ¹⁶¹⁷

4.2.2 *Smuggling of migrants*

Functions in the smuggling of migrants-network	
Recruitment	The recruiters are often relatives, friends, acquaintances or people recommended by the migrant’s own social network. There is no evidence pointing towards online luring, mala fide figures “scouting” for potential migrants in unfamiliar territories, or any other typical methods deployed by trafficking in persons groups.
Transportation	The people responsible for transportation in the network are those who bring the migrants from and to certain points before and after crossing borders. This can for example be a driver who takes a group of migrants to the ship that will take them across the border. It can also be a driver who takes the migrants from the place where the ship has docked to a safe-house in the destination country, etc
Document forging/ obtaining necessary documents	This node consists of people who provide the necessary documents to facilitate a migrant’s journey. They either have the right connections to corruptible officials or they have the skills to forge documents themselves.
Bribery/Corruption	This node of the network constitutes of public officials who are bribed to facilitate illegal migration. They can be border guards who allow illegal passing, embassy personnel who grants visas, police officers who let the network operate and close their eyes for a sum of money, etc.
Guiding/ Illegal border crossing	Guides accompany the migrants across the border, be it on foot, on a rowing boat or any other means of transportation. These guides can possibly use violence on the migrants themselves, or have an “enforcer” with them on board to keep order among the migrants, if necessary by means of violence
Debt Collection	Some networks entail a violent element after the migration-process is over. This may constitute of locking up migrants or taking them hostage until their smuggling fees are paid. These “enforcers” can also get the fees by threatening relatives who were left behind in the origin country of the migrant, to pay off the migrant’s debt.
Money Laundering	Profits that these networks make need to find entry into the legal

¹⁶ Surtees, R. (2008), “Traffickers and Trafficking in Southern and Eastern Europe: Considering the Other Side of Human Trafficking”, *European Journal of Criminology* 2008; 5; p 47

¹⁷ see also Sokullu-Akinci, F. (n.d.), *Organised Crime and Trafficking in Human Beings in Turkey*, Istanbul, Istanbul University, Faculty of Law

Functions in the smuggling of migrants-network	
	sphere. Illegal proceedings need to be laundered and this is an essential part of the whole smuggling operation.

4.3 Mobility between crime types

To finalise the analysis of the typology of organised crime involvement, the mobility of actors between different crime types should be highlighted. The strong influence of profit maximalisation and business models not only impacts on the typology of involvement of organised crime in trafficking in persons or smuggling of migrants, but also impacts on the mobility of the actors involved towards other crime types.¹⁸

The mobility is both functional (i.e. based on what is needed to optimize involvement in existing crime types) and purely financial (i.e. based on what other criminal activities can be deployed considering the risks that are already being taken).

Two types of relationships with other crimes can be distinguished in this respect. First, trafficking in persons and smuggling of migrants consist of chains of individual, vertical offences, which are in close relationship with each other. Such crimes in vertical relationship are, *inter alia*; corruption, counterfeiting of travelling documents and violation of immigration laws.¹⁹ Organised crime groups are indeed involved in several so-called “ancillary” offences directly relating to, or committed in preparation of the crimes of trafficking in persons or smuggling of migrants.²⁰

The importance of this ‘criminal context’ becomes additionally meaningful when considering the predominance of the network-structure of organised criminal groups involved in trafficking in persons and smuggling of migrants. Functions in the network such as bribery, document forging, enforcing, can be seen as the context of trafficking in persons and smuggling of migrants, or as ancillary crimes meant to result or sustain trafficking in persons.

It is however equally important to note that actors active in trafficking in persons or smuggling of migrants may also be involved in other serious crimes, not necessarily being directly related to trafficking in persons or smuggling of migrants. Other forms of serious organised crime, such as illegal gun and/or drug trafficking, can be in horizontal relation with organised trafficking in persons and smuggling of migrants. The metaphorical perception as offered by a consulted expert, of smugglers as owners of an underground tunnel, not caring

¹⁸ see also Martens, J. (n.d.), Assistance to victims of trafficking as an effective means of combating organised crime, South Africa, International Organization for Migration; Europol (2009), European Organised Crime Threat Assessment 2009 (OCTA), Den Haag, Europol

¹⁹ International Centre for Migration Policy Development (1999), The Relationship between Organised Crime and Trafficking in Aliens, Vienna, International Centre for Migration Policy Development

²⁰ Stoecker, S. and Shelley, L. (2005) (eds.), Human Traffic and Transnational Crime: Eurasian and American Perspectives, Lanham, Rowman& Littlefield Publishers; UNODC (2002), Result of a Pilot Survey of Forty Selected Organised Criminal Groups in Sixteen Countries, Vienna, United Nations Office on Drugs and Crime

what commodities go through their tunnel, fits this assertion. Whether it is drugs, people, weapons or anything else that they illegally run through the network, as long as it pays off it does not matter what the illegal goods are.

It is important to re-stress the role that profit-maximisation plays. If a network sees an opportunity to maximize their profit by means of involvement in other criminal activity, they will take it.

5 Un-organised criminal involvement

The assumption that trafficking or smuggling is the prerogative of organised criminal groups (be it hierarchically structured or part of a network), is only partially correct. The enormous diversity in the key players involved trafficking in persons and smuggling of migrants also stretches beyond “organised criminal involvement”. In this respect, it is important to point out the importance of un-organised involvement in both trafficking and smuggling.²¹ Therefore, individual criminal involvement in both phenomena will be assessed and it will be analysed what role social networks can play.

5.1 Individual involvement

The possibility that individuals are involved in trafficking or smuggling is often ignored, because the chance at success for individual actors to effectively complete a large-scale trafficking or smuggling operation is logically considerably low.

“It is highly unlikely, that one individual would succeed in large-scale, transnational and long-lasting trafficking and smuggling operations, involving a large amount of victims or migrants. [...] All phases in such large operations require cooperation between a certain amount of actors and a chain of activities, sometimes to be completed simultaneously. [...] More than one person has to be involved to make such an operation successful and to be able to sustain it”.
(Extract from expert interview)

However, evidence exists of individuals, having been successful in smaller-scale trafficking in persons or smuggling of migrants, with not more than a couple of migrants to help migrate or just one or a small group of trafficking victims to exploit.

In the following analysis, an individual trafficker or smuggler is obviously considered to be one (or two) criminal responsible for all different stages of the

²¹ see also Väyrynen, R. (2003), *Illegal Immigration, Human Trafficking, and Organised Crime*, Helsinki, United Nations University – World Institute for Development Economics Research, Discussion Paper No. 2003/72; Surtees, R. (2008), “Traffickers and Trafficking in Southern and Eastern Europe: Considering the Other Side of Human Trafficking”, *European Journal of Criminology* 2008; 5: 39-68

trafficking or smuggling process, from recruitment to transport to exploitation in the case of trafficking. The seemingly contradictory “one (or two)” when analysing “individual” criminal involvement is directly linked to the UN definition of an organised criminal group. The UN definition requires at least 3 people to be involved before they can be labelled an organised crime group. Therefore in this definition, two criminals do not constitute a group.

5.1.1 Trafficking in persons

The recruitment, transportation and exploitation phase can be orchestrated and sustained by one trafficker. He can easily make a lot of money from his sole victim or small group of victims. There is ample evidence of these kinds of trafficking operations.²² In parallel to the evidence on trafficking, this evidence is on trafficking for the purpose of sexual exploitation. There is a substantive amount of case law²³ involving individual traffickers, prosecuted and convicted for trafficking in persons for the purpose of sexual exploitation. It is however important to recognise that these case examples may miss some important details, especially in the light of organised criminal involvement. The wider context of these cases may not have been investigated or included in the case reports.

Trafficking in persons for the purpose of exploitation in the form of domestic servitude deserves special focus in the light of individual criminal involvement in trafficking. This is the most difficult form of trafficking in persons to detect. As this kind of exploitation occurs behind closed doors and fully into domestic settings, this form of trafficking is the least best understood. Reports in the literature²⁴ and examples from experts make it acceptable to conclude that it does occur that one person individually recruits a domestic servant under false pretences of a well-paid job. This false job offer could for example concern a job as a maid, in reality concerning exploitation of the servant in the employer’s home , with low chances of detection by authorities. Such cases do not entail an element of organised criminal involvement. For example, there is great demand in some wealthier countries of Asia and the Persian Gulf for domestic servants who sometimes fall victim to conditions of involuntary servitude.

²² See for example Bales, K. and Lize, S. (2005). *Trafficking in Persons in the United State*, Croft Institute for International Studies, University of Mississippi

²³ See for example the case reports provided on the website of the Human Trafficking Working Group of the University of Queensland TC Beirne School of Law. This project provides a comprehensive analysis of the phenomenon of trafficking in persons, especially women and children, and their exploitation in the sex industry and other forms of forced labour in Australia. It identifies and analyses reported and suspected cases of human trafficking and sexual exploitation of foreign workers, see <http://www.law.uq.edu.au/documents/humantraffic/case-reports/>

²⁴ See for example International Labour Organisation (2008), *Investigating Forced Labour and Trafficking: Do they exist in Zambia?* Geneva, International Labour Organisation; Kalayaan (2008), *The New Bonded Labour? The impact of proposed changes to the UK immigration system on migrant domestic workers*; Integrated Regional Information Networks (IRIN) (2003), *A Gap in Their Hearts: the Experience of Separated Somali Children*, UN Office for the Coordination of Humanitarian Affairs, Nairobi, IRIN

5.1.2 *Smuggling of migrants*

As for individual smugglers, unfortunately not such an extensive evidence-base can be found as is the case for individual traffickers. According to some experts, cases of smugglers, operating purely on an individual basis can only involve a small amount of migrants, unsophisticated routes and methods and not more than one or two border-crossings.²⁵ It is however clear from the expert opinions registered, that it is a lot more likely that smugglers cooperate with others who complete even the simplest of tasks in the smuggling-process. A 'smuggler' is not merely the person who crosses borders with migrants. It is also the person who organises the trip, organises places to stay underway, brings the migrants into contact with the right persons, etc.

This is not to say that individuals can in no possible way be successful in small-scale smuggling.²⁶ It is however clear that the larger the amount of smuggled migrants, the bigger the distance between origin and destination country and the stricter the border policies, the more difficult it will be for an individual to succeed in a smuggling operation.

Detection rates for migrant smugglers are very low, so when it comes to irrefutable evidence on individual involvement in smuggling of migrants, no definitive conclusions can on this point be offered.

5.2 **Involvement of the social network**

As a second form of un-organised crime involvement reference can be made to the involvement of a person's social network. Analysis revealed that partners, family members, friends and neighbours can play a crucial role in both trafficking and smuggling.

5.2.1 *Trafficking in persons*

In trafficking groups, the people active in the recruitment-phase of the operation, are often from the same community as the victims and often have existing trust-relations with them. The willingness of a victim to join the trafficker and travel with him or her, blindly falling prey to exploitation at arrival, is in these cases usually based on trust. This can be due to a family relation or friendship, or due to the good reputation of the acquaintance to for example provide good jobs overseas.²⁷

²⁵ See also Bales, K. and Lize, S. (2005). *Trafficking in Persons in the United State*, Croft Institute for International Studies, University of Mississippi

²⁶ see for example on so-called "pateros", better known as "coyotes": Spener, D. (2001), "Smuggling Migrants through South-Texas: Challenges Posed by Operation Rio Grande", in Koslowski, R. and Kyle, D. (eds.), *Global Human Smuggling: Comparative Perspectives*, Baltimore, John Hopkins University Press

²⁷ see also Bales, K. and Lize, S. (2005). *Trafficking in Persons in the United State*, Croft Institute for International Studies, University of Mississippi; International Labour Organisation (2008),

In the case of sex trafficking for example, traffickers are reported to recruited victims with highly specific and personalised promises; a woman, recruited by 'friends' who offered to assist her in entering a drug rehabilitation programme; a Romanian woman was 'assisted' in going abroad by her friend's brother, who told her of a fertility clinic that she hoped would save her failing marriage; and a Bulgarian woman was offered work abroad by her neighbour precisely when she needed money to pay for her daughter's emergency eye operation.²⁸

One example of social network-involvement, which equally fits in the individual involvement-section, is the loverboy-method. This method consists of a young man making a young girl fall in love with him, to make sure she is easy to be lured or forced into prostitution for his benefit.²⁹ Looking only to the wording of Art. 3 (a) of the Trafficking Protocol, a loverboy is a human trafficker. In this setting, he is an individual trafficker. The loverboy-method is however also employed by organised crime groups involved in trafficking in persons. In this scenario, loverboys fulfil the first function of the trafficking process, namely the recruitment-function. Their job is to make girls fall in love with them, to then hand them over to other people in the group and to eventually end up as being exploited.

5.2.2 *Smuggling of migrants*

The role that a social network can play is more significant and has a larger evidence-base for smuggling of migrants than for trafficking in persons. There are a lot of accounts of smuggling cases which involved a family member, friend or acquaintance of the victim or his or her family.³⁰ It is important to note that not all facilitation of illegal entry of migrants is undertaken with profit as a main motivator. It is clear from the literature that sometimes, migrants who have successfully entered a foreign country, be it legally or illegally, and have build up a life for themselves may be motivated to help others within his social network migrate. This means that this kind of illegal migration falls outside the scope of 'smuggling of migrants', but it is however important to note this aspect to underline that not all illegal migration is orchestrated and facilitated by organised criminal groups.

Investigating Forced Labour and Trafficking: Do they exist in Zambia? Geneva, International Labour Organisation; Surtees, R. (2008), "Traffickers and Trafficking in Southern and Eastern Europe: Considering the Other Side of Human Trafficking", *European Journal of Criminology* 2008; 5; 39-68

²⁸ Surtees, R. (2005), *Second annual report on victims of trafficking in South-Eastern Europe*, Geneva, International Organization for Migration and the Regional Clearing Point

²⁹ see for example Goodey, J. (2008), "Human Trafficking: Sketchy data and policy responses", *Criminology and Criminal Justice*, 8: 421-442; Noten, T. and van den Borne, A. (2004), *Trafficking in children for sexual purposes Update Country report*, The Netherlands, <http://www.ecpat.nl/images/13/383.pdf>

³⁰ Herman E. (2006), "Migration as a family business: the role of personal networks in the mobility phase of migration", *International Migration* vol.44 n°4; Van Wijk, J. (2008), "Luanda-Holanda: Irregular Migration from Angola to the Netherlands", *International Migration – journal compilation*

A person wanting to migrate can get in contact with people he knows or have been recommended to him. These friends, relatives, acquaintances or indirect acquaintances can for example offer sleeping places throughout the journey, assistance in travelling between certain points, temporary housing at arrival in the destination country, etc. Experts reported this kind of 'facilitation' to be one of the most common forms of illegal migration. This underlines that when it comes to illegal border-crossing, (organised) criminal involvement is certainly not a *condition sine qua non*.

6 Concluding recommendations

Based on the research findings, a set of four concluding recommendations can be formulated.

- (1) The criminal justice responses need to be updated
- (2) Distinction needs to be made between hierarchical structures and network structures
- (3) Knowledge needs to be refined on the criminal context of trafficking and smuggling
- (4) International cooperation needs to be stepped up, especially for un-organised criminal involvement in trafficking and smuggling

6.1 Update the criminal justice responses

Once it has been established that an organised crime structure is to all probability behind a trafficking or a smuggling operation, the current responses there-to are inadequate. On many occasions, strategic choices are made in the decision-making process of prosecutions and investigations. Decisions to further investigate certain cases for their entirety, are reported to often be based on a time, resource and 'chance of success' - basis. Such cost and benefit-weighting can never be acceptable when harm has been done and/or is at risk of further being imposed on people.

Additionally, some of the regular evidence-gathering techniques are in these cases not suitable and bound to be unsuccessful. Witness and victim testimonies are the best example of this assertion.³¹ Trafficking victims are usually not eager or even unwilling to contribute to investigations. As follows from the predominance of the network structure of organised crime groups involved in trafficking in persons or smuggling of migrants, and the often very loose connections between the criminals involved, it can also simply be that the victims do not know who the people behind the whole operation are. Even if they are willing to cooperate, they might not have any valuable information to share.

This certainly counts for smuggling of migrants. In the case of smuggling of migrants, it needs to be said that on top of all other investigative difficulties,

³¹ Europol (2009), European Organised Crime Threat Assessment 2009 (OCTA), Den Haag, Europol

migrants are rarely eager to cooperate as they usually do not consider the people that assisted them across borders as criminals.

Investigations concentrating on victims' or migrants' testimonies may not be the appropriate course of action. Fitting investigation methods therefore urgently need to be reconsidered.

6.2 Distinguish between mafia-like hierarchical structures and network structures

A more profound recognition of the particularities of the dominant network-structure of organised criminal groups is in order. This should also impact on the criminal justice response to these phenomena. A typical way of trying to eradicate organised crime following a mafia like hierarchical structure is to focus on the main responsible(s). However, this approach is not suited to tackle network-structures. In these structures, the focus should be on 'functions' in an organised crime network and disruptions of networks on a functional basis. For example, criminal justice could be directed against a particular form of a possible 'recruitment' - node of trafficking for sexual exploitation. A hypothetical example could be mala fide online modelling agencies luring girls into sexual exploitation. A fitting criminal justice response could be obliging online modelling recruitment websites to obtain a quality label after thorough quality checks before they can be operational.³² This can constitute a significant challenge to a trafficking network, recruiting their victims in this manner. If an existing network is faced with such regulations, recruitment in this particular way could not be continued. This would mean an actual significant disruption of the network.

A touch of realism is however in order when recommending this approach; this particular network will be seriously disrupted without the possibility of a recruitment-node by online model agencies. However, chances are high that the remaining specialists of the remaining nodes of the network will easily be able to get involved in a different kind of network. It is a possible scenario that in the disrupted network, the person having forged documents will easily gain access to another network that may employ the loverboy-method to recruit girls.

Only by attacking all possible functions in these networks, would there ever be any real chance at successfully tackling trafficking in persons and smuggling of migrants by criminal networks. However, if more and more networks are disrupted in a manner as explored in the given scenario, it will be more difficult every time for the remaining specialists to find their place in other networks. Making trafficking in persons and smuggling of migrants as difficult as realistically possible, is certainly a worthy a goal.

³² Vermeulen, G. (2007) (ed.), EU Quality standards in support of the fight against trafficking in human beings and sexual exploitation of children, Antwerp, Maklu

6.3 Refine knowledge on the criminal context of trafficking in persons and smuggling of migrants

A more profound focus should be put on the criminal context of trafficking in persons and smuggling of migrants. In the context of the criminal network-structure, this means that more focus should be put on the different functions or nodes of the network. There is an important role reserved for “local” law enforcement and their consideration of the criminal context in this respect. Smaller-scale, ancillary crimes meant to result or sustain the offence are best to be detected on a local level. Examples of such an approach are; taking the investigation beyond merely prosecuting a brothel owner after the discovery of women without passports in strip clubs or after finding illegal workers in a factory or on a plant; exploring the wider context when discovering a forged entry document. If investigations at a local level stop at the first findings, and the context in which these crimes or events occur is not further explored, the overview of all details of the possible organised trafficking in persons or smuggling of migrants case can be lost. If local law enforcement, detecting smaller scale crime related to these forms of serious organised crime are unable to take certain investigations to the next level, even by simply passing it on to more specialised law enforcement units, or international police cooperation structures, the large majority of trafficking or smuggling cases will continue to go undetected. The difficulty with this recommendation is that its implementation would not be easy. Discovering the wider context of trafficking in persons or smuggling of migrants, or differently put, recognizing the context in which smaller scale crime is committed requires specialised training for local law enforcement. Also, a much more profound understanding and awareness of what constitutes trafficking in persons, smuggling of migrants and organised crime, would be needed. This would require specialised training, additional means and time.

6.4 Step up international cooperation, certainly for un-organised crime involvement

The presence of un-organised involvement in trafficking in persons and smuggling of migrants has significant consequences for the roll-out of the international instrumentarium. As explained, for some criminal justice responses as dealt with in the Convention and the Protocols and where no provision to the contrary is given in national legislation, the un-organised crime involvement in trafficking in persons and smuggling of migrants, slips through the net.

In practice this means that, firstly, requests for confiscation of proceeds of crime, property, equipment or other instrumentalities, no longer need to be complied with to the greatest extent possible if the offence does not involve an organised criminal group. State parties do not have to take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities in those cases.

Secondly, with regard to these un-organised forms of trafficking in persons and smuggling of migrants, State Parties are not obliged to establish jurisdiction. This is so neither where the offence is committed in the territory of that State Party or where the offence is committed in board of a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

Thirdly, the *aut dedere aut judicare* principle no longer applies when the offences do not involve organised criminal groups. When a State Party in whose territory an alleged offender is found, does not extradite that person solely on the ground that he or she is one of its nationals, that State Party shall no longer have the obligation to comply with the request of that State Party seeking the extradition, to submit the case without undue delay to its competent authorities for the purpose of prosecution.

Fourthly and finally, the obligation to afford each other the widest possible measure of mutual legal assistance in investigations, prosecutions and judicial proceedings no longer applies in cases that do not involve organised criminal groups. The incentive to consider the setting up of joint investigation teams equally loses its power.

Considering the significant presence of un-organised involvement in both trafficking in persons and smuggling of migrants international cooperation should be intensified for those forms too, regardless of their unorganised character.

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