



INTERNATIONAL CENTRE FOR
MIGRATION POLICY DEVELOPMENT

The Relationship between Organised Crime and Trafficking in Aliens

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SUMMARY OF THE DRAFT STUDY

At the 1997 Prague Ministerial Conference on the Prevention of Illegal Migration, the Ministers adopted a recommendation (no. 53) which required “that the Budapest Group, in close co-operation with relevant international bodies, ensures the preparation of a study on the extent to which international organized crime is expanding its activities into trafficking in aliens”.

Against this background, the Secretariat hired in 1998 a consultant to draft the study. The draft study was presented at a working group meeting with representatives of governments and international organisations held in Vienna in October 1998. It was thereafter submitted to the 6th meeting of the Budapest Group, held in Warsaw in early December 1998. The second working group meeting was held in Bratislava, Slovakia in March 1999. Following further amendments, the study is now circulated among states and organisations participating in the Budapest Group.

The study indicates that the inter-linkages between organised crime and trafficking in, as well as smuggling in persons is two-fold: vertical and horizontal. Firstly, trafficking in and smuggling of persons consists 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. These types of organised crime are on the rise in Europe. Secondly, there are horizontal connections between different criminal activities by the same organisation. Criminal groups involved in particular in trafficking business are also involved in other types of criminal activities, such as exploitation of prostitution and other forms of sexual exploitation, car thefts, burglaries and illegal gun and/or drug trafficking. Furthermore, money received from these activities is to be laundered. Also these types of crime are increasing in Europe.

These different types of crimes, both in vertical and horizontal relationship with trafficking in and smuggling of persons, are diversified among different elements in the organised crime group, which then independently carry them out. These elements are highly specialised, consist of one or more persons and know very little about the organisation. Diversification of tasks minimises the law enforcement risk. The following elements have been identified in a structured trafficking group: (i) recruitment element, (ii) transportation element, (iii) corrupted public officials, (iv) guide elements, (v) supporting element, (vi) debt collecting element and (vii) management level.

In accordance with the definitions of Europol and Interpol, the concepts of trafficking in and smuggling of persons are distinguished from each other in this study. Shortly, trafficking in persons comprises of, in addition to facilitation of the border crossing, a form of exploitation and, thus, profits gained from the business are double. Either border crossing or stay is illegal. Smuggling includes only the facilitation of border crossing. It is without exception illegal. Both trafficking in and smuggling of persons are organised by clandestine criminal groups, which are also involved in other types of organised criminality. The structures of these groups vary greatly from loose amateur groups to international structured organisations.

Thus, the phenomena of trafficking in and smuggling of persons are not only problems of migration but also problems of organised crime and the emphasis should be focused more on dissolving the organised crime structures and, in particular, the management level. In the fight against organised crime multilateral co-operation is of crucial importance. Hence, international fora dealing with the fight against organized crime and those dealing with migration should initiate a close co-operation.

I. INTRODUCTION

1. Within the framework of the Budapest Process, the Conference of Ministers on the Prevention of Illegal Migration was held in Prague on the 14-15 October 1997. It adopted a set of recommendations relating to (i) harmonisation of legislation to combat trafficking in human beings¹; (ii) pre-entry and entry control, in particular the approximation of visa regimes; (iii) return to the country of origin and readmission agreements; (iv) information exchange on illegal migration; (v) technical and financial assistance to Central and Eastern European States; (vi) linkage between trafficking in aliens and other forms of organised crime and (vii) future co-operation between participating States in the context of the Budapest Process. With regard to the linkage between trafficking in aliens and organised crime, the Conference stated in its recommendation 51-53:

that participating States ensure that their national law enforcement authorities give further consideration to the links between trafficking in aliens and other forms of organised crime;

that participating States facilitate the bilateral and multilateral exchange of experience and information at operational levels in order to improve the knowledge of the methods used in different kinds of trafficking;

that the Budapest Group, in close co-operation with relevant international bodies, ensures the preparation of a study on the extent to which international organised crime is expanding its activities into trafficking in aliens.

2. In order to follow up these three recommendations, in particular recommendation 53, two working group meetings were held, one in Vienna, Austria in October 1998, the other in Bratislava, Slovakia in March 1999. For the purpose of these meetings, a working paper had been prepared by the Secretariat, through the special consultant, Ms. Riikka Puttonen. The paper is based on dozens of scientific publications and articles, as

well as both public and classified reports. In addition, several people working in the field with migrants and in law enforcement contributed to this report. The working paper , which was also submitted to the sixth meeting of the Budapest Group held in Warsaw on 7-8 December 1998, was discussed in detail in the meetings, in which representatives of governments of Austria, Belgium, Croatia, Germany, Norway, Poland, Portugal, Russian Federation, Slovakia and Turkey, as well as representatives of Europol, Interpol, IOM and United Nations Centre for International Crime Prevention and United Nations High Commissioner for Refugees participated. The working paper was revised according to the discussions in the meetings.

¹ Within the Budapest Process the concept trafficking in aliens is meant to cover both trafficking in and smuggling of persons.

II. MULTILATERAL EFFORTS TO COMBAT ORGANISED CRIME

The expansion of organised crime in general

3. For decades, the issue of organised crime attracted very little attention at the political level in Europe. However, already in the 1970's organised criminality was spreading both in Western and Central/Eastern Europe and started to penetrate societies. As a consequence, the criminal markets became more mobile, international and violent. Furthermore, the radical changes in Eastern Europe in the late 1980's implied growing possibilities for organised crime to carry out transfrontier operations all over Europe.

4. In most of the Western European countries, organised crime is currently entering markets to an increasing extent. Thus, in the last ten years statistics on the following crimes have shown a considerable rise in Western Europe: car thefts, economic crimes, money laundering, illegal gun trafficking, corruption, illegal trafficking in environmental waste, criminality in connection with immigration such as smuggling of people and illegal border crossings, visa and passport counterfeiting, criminality in connection with employment, in particular illegal hiring of illegal migrants and criminality in connection with prostitution and other forms of sexual exploitation.

5. In Central and Eastern Europe, in addition to some of the above mentioned types of crime, i.e. criminality in connection with prostitution and other forms of sexual exploitation and corruption, there is a rise in extortion, criminality against property, economic crimes and money forgery. A more traditional type of international crime, drug trafficking, remains highly productive. All these crime types are forms of organised crime and typically have interdependencies with each other.

Multilateral action to fight organised crime

6. Against this background, the multilateral activities to combat organised crime have been upgraded in the last ten years. The growing concern regarding this above mentioned mobilisation and internationalisation development has lead to an increasing number of international initiatives aimed at intensifying the fight against organised

crime. In addition to the classical international police co-operation, carried out through Interpol and Europol, these multilateral endeavours are mainly pursued at the European Union, the Council of Europe and the United Nations levels.

The European Union in general

7. Before the Maastricht Treaty, there was no specific European Community framework for dealing with matters relating to organised crime, but the informal police co-operation between Member States, which had been initiated already in the mid 1970's, was gradually expanded to deal also with organised crime, among others in the context of the TREVI group. The Maastricht Treaty (in force in November 1993) and its Third Pillar made specific provisions in the field of justice and home affairs, leading to the establishment of a formal co-operation structure for customs and police matters, as well as for criminal and judicial issues.

8. Within the framework of this structure, working groups on police co-operation, drugs and organised crime, terrorism and judicial co-operation were established. Since the Maastricht Treaty, the European Union has issued several legal instruments relating to the fight against organised crime. The application of these instruments gained new impetus since the Action Plan to combat organised crime with its thirty recommendations was adopted in April 1997. The Action Plan also includes the component of an exchange and training programme (the Falcone Programme).

9. A Pre-accession Pact on organised crime between the Member States of the European Union and the applicant countries of Central and Eastern Europe and Cyprus was approved on 28 May 1998. The main purpose of this Pre-accession Pact is to develop a joint annual strategy to identify the most significant measures against organised crime. These measures include a two-way flow of information, the exchange of liaison officers, joint investigative activities and special operations carried out with Europol's support.

10. Presently, the Justice and Home Affairs co-operation structure is discussing guidelines and measures for prevention against organized crime with a view to establishing a global strategy against it. The proposal was in Parliament on 12 October 1998 and it proposed some amendments to it.

Europol

11. The Maastricht Treaty allowed for an increased police co-operation in the fight against organised crime. As a consequence, the European Drug Unit (EDU), a first step towards the establishment of Europol, was set up through an European Council decision in 1993. The criminal activities to be covered by EDU were illegal drug trafficking, crimes involving clandestine immigration networks and illicit vehicle trafficking. In December 1996, the Council extended the mandate of EDU also to the trafficking in human beings.

12. The Europol Convention entered into force on 1 October 1998 and Europol has thereby been endowed with different new tasks: to obtain, collate and analyse information; to notify the competent authorities of Member States without delay of any information and connections detected among criminal offences; to aid investigation within the Member States and to maintain a computerised system for collecting information. Europol is thus charged with combating illicit trafficking in nuclear and radioactive substances, human beings, vehicles and drugs, as well as related money laundering. From January 1999 on Europol is, in addition to the above mentioned mandates, charged with terrorism and child pornography.

Council of Europe

13. The action of the Council of Europe inter-governmental work programme against crime is channelled through the European Committee on Crime Problems (CDPC). The most recent result of these activities is the final declaration and action plan adopted at the Summit of the Council of Europe in October 1997. It was agreed that international co-operation in the fight against terrorism will be strengthened; co-operation between Member States in combating corruption, including its links with organised crime and money laundering, will be boosted; co-operation in tackling problems related to the use of and trafficking in illicit drugs will be strengthened; and common standards for the protection of children undergoing or at risk of inhuman treatment will be ensured, the aim being to prevent all forms of exploitation, including child pornography.

Interpol

14. Interpol has a membership of 178 countries and a world-wide telecommunications network which links each member's National Crime Bureau (NCB) by E-mail, and gives automated access to a centralized data base of information on international crime and criminals. The NCBs are a key element in the services Interpol provides to its member countries. The NCBs serve as a link between law enforcement agencies of one country and the law enforcement agencies of other member countries. International broadcasts and notices are circulated at the request of member countries about criminals who are wanted or operate on an international level, missing persons, unidentified bodies, stolen property, and methods used by criminals.

15. The growth and threat of criminal organizations has been discussed in various resolutions adopted at the Interpol General Assembly sessions during the 1970s and 1980s, specifically noting that economic crimes were used to finance organized crime, the role of organized crime in illicit drug trafficking and organized crime syndicates were specializing in certain offenses. After the 1987 General Assembly, a working group on organized crime was initiated in 1988, which resulted in Interpol's definition of organized crime and a resolution which was introduced at the 1988 General Assembly creating a specialized group to "co-ordinate all the information submitted by the Member states concerning specific organized criminal groups." This resolution noted that "combating the international activities of organized crime requires the full police co-operation at the international level, ... that organized crime does not limit itself to one form of criminal activity,...that it is imperative that all Member States be made aware of current activities, movements and operations of organized criminal groups,... the exchange of such information should be surfaced at international forums."

16. As a result of this resolution, Interpol created the Organized Crime Branch at the General Secretariat in 1989. A subsequent resolution adopted at the 1993 General Assembly further emphasized the need for international co-operation in the fight against organized crime, recommending that "the ICPO-Interpol should continue to encourage police efforts and to intensify co-operation between countries and their police services,...seeking to improve the information that is exchanged between countries, and the analysis of that information, and to promote participation by all countries in the structure created within the ICPO-Interpol to deal with this subject." The long-term aim of the Organized Crime Branch was to create an extensive data base of organized criminal

enterprises and persons who are engaged in continued, illegal activity in order to generate illicit profits.

17. The Organized Crime Branch recognized that organized crime groups were increasingly becoming involved in alien smuggling and trafficking in human beings and with the assistance of member countries initiated a project dealing with illegal immigration matters. In 1996, Project Marco Polo was initiated to produce a study on the routes, modus operandi and organized crime groups involved in illegal immigration from any country to Western Europe. The Marco Polo study, published in 1997, reported that the largest number of illegal immigrants to Europe from 1992 to 1997 had originated from either Iraq, China, Pakistan, India, or one of the African nations, such as Nigeria, Rwanda, or Somalia. Several routes utilized in the smuggling of Chinese nationals to Western Europe were noted in the Marco Polo study.

18. Since the publication of that study, member countries have advised that there is a need not only for Interpol's communication system, but for timely intelligence and specialized analytical assistance. In reviewing many of the messages regarding alien smuggling investigations, the Organized Crime Branch noted that investigations were often conducted bilaterally or only in destination countries. These investigations were not being conducted with the transit countries or countries of origin. Without the co-operation of these countries, it will be difficult to dismantle the inter-linked smuggling infrastructure. The Organized Crime Branch is currently collecting and analyzing messages pertaining to several other important cases of illegal immigration and trafficking in human beings. After an evaluation of these cases, Interpol intends to continue to send specialized officers and analysts to assist police units during ongoing investigations which have an importance on an international level.

19. Interpol wishes to provide member countries with better insights into the linkage between organized crime groups and illegal immigration and trafficking in human beings, in particular on these groups, their members, their routes, methods of transportation, location of safe houses, identity of escorts, suppliers of forged documents, and visa fraud. Emphasis will be placed on the collection and reporting of information related to post-smuggling activities of organized crime groups involving

smuggled persons such as forced labor, organized begging, pick pocketing and prostitution.

United Nations

20. The United Nations and its Vienna-based Office for Drug Control and Crime Prevention (ODCCP), including the Drug Control Programme (UNDCP) and the Centre for International Crime Prevention (CICP), play an important role at the global level in the fight against organised crime. As a result of the restructuring of the work of the United Nations, which was carried out in connection with the appointment of the new Secretary-General, these Vienna-based activities were strengthened and updated.

21. A first important step with regard to the relevant United Nations activities was the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which contains provisions requiring the development of international co-operation in the fields of extradition, asset forfeiture, mutual legal assistance, co-operation among the law enforcement agencies of Member States, control of precursor and essential chemicals and crop eradication.

22. In order to address the problem of the internationalisation and sophistication of criminal groups, at the World Ministerial Conference on Organised Transnational Crime held in Naples in 1994, UN Member States adopted the Naples Political Declaration and Global Action Plan against Organised Transnational Crime. The Naples Action Plan lays emphasis on national capacities and international co-operation against organised transnational crime and its prevention. Furthermore, it points out the necessity for a generally accepted definition of organised crime (see below) and the need to highlight its main structural characteristics and *modus operandi*.

23. As regards the further fight against organised crime, the Commission on Crime Prevention and Criminal Justice was requested to examine the feasibility of drawing up a convention against organised transnational crime. The last informal preparatory meeting of the Open-ended Intergovernmental Ad-Hoc Committee on the Elaboration of the Comprehensive International Convention against Transnational Organised Crime took place in Vienna, Austria, in March 1999.

24. The Convention, including a protocol to prevent, suppress and punish trafficking in persons, in particular women and children, supplementing the United Nations Convention against transnational organised crime to which Argentina and the United States of America took the initiative, and a protocol on smuggling of human beings, including by sea, supplementing the same convention and to which Austria and Italy took the initiative, should be finalised until the year 2000. Furthermore, the Centre for International Crime Prevention (CICP) together with the United Nations Interregional Crime and Justice Research Centre (UNICRI) will implement a global programme on trafficking in and smuggling of human beings.

The various definitions of organised crime

25. As the definition of organised crime is a source of controversy among international organisations, the varying definitions utilised will be explained in the following. The concept of organised crime has been defined jointly by the European Commission and the Expert Group on Organised Crime of the Council of Europe. The mandatory criteria of the definition include 1) collaboration of three or more people, 2) for a prolonged or indefinite period of time, 3) suspected or convicted of committing serious criminal offences, 4) with the objective of pursuing profit and/or power.

26. The optional criteria are 5) having a specific task or role for each participant, 6) using some form of internal discipline and control, 7) using violence or other means suitable for intimidation, 8) exerting influence on politics, the media, public administration, law enforcement, the administration of justice or the economy by corruption or using other means, 9) using commercial or business-like structures, 10) engaged in money laundering and 11) operating on an international level.

27. The criteria Europol is using differs slightly from the above mentioned. In the Europol criteria, at least six of the following characteristics must be present, three of which must be those numbered 1,5 and 11, for any crime or criminal group to be classified as organised crime: 1) collaboration of more than 2 people, 2) each with own appointed tasks, 3) for a prolonged or indefinite period of time, 4) using some form of discipline and control, 5) suspected of the commission of serious criminal offences, 6) operating on an international level, 7) using violence or other means suitable for intimidation, 8) using commercial or businesslike structures, 9) engaged in money

laundering, 10) exerting influence on politics, the media, public administration, judicial authorities or economy and 11) determined by the pursuit of profit and /or power.

28. As mentioned, the United Nations is currently working on an International Convention against Transnational Organised Crime, in which the concept of transnational organised crime is to be defined. So far, no consensus has been reached. In the following, the two options for the scope of application for the International Convention are mentioned. So far, option 1 of the Draft Convention, which is based on what is referred to as a “seriousness test” combined with an involvement of an organised criminal group, has gathered the most support. In other words, the crime has to be i) serious enough and ii) a criminal organisation has to be involved in the commission of the crime, i.e. the offence includes transnational elements or other elements typical to organised crime.

29. Option 2 proposed by Mexico, is based, in addition to a “seriousness test”, on an illustrative list of offences. However, many countries, among them all European Union countries, have specifically rejected an approach based on either an exhaustive or illustrative list. In their opinion it would be difficult to reach a consensus on the list of offences also since circumstances in different parts of the world differ greatly. Still, some delegations argue that the first option does not clearly enough clarify the phenomenon and that, if the definition is too wide, it may overburden authorities.

30. The 1994 Naples Political Declaration and Global Action Plan lists the following six characteristics of organised crime: 1) there has to be group organisation to commit crime, 2) hierarchical links or personal relations which enable leaders to control the group, 3) the use of violence, intimidation and corruption to earn profits or control territories or markets, 4) the laundering of illicit proceeds to further criminal activity and to infiltrate the legitimate economy, 5) a potential for expansion into any new activity beyond national borders, and 6) co-operation with other organised transnational criminal groups. Furthermore, the Naples Plan emphasises that criminal organisations vary in size, scale, geographical scope, relationship with the power structures in home and host states, internal organisations and structures, the combination of instruments that they use to avoid law enforcement and to pursue their criminal enterprises, and the range of their legal and illegal activities.

III. THE ISSUE: IS INTERNATIONAL ORGANISED CRIME EXPANDING ITS ACTIVITIES INTO TRAFFICKING IN PERSONS?

General

31. Illegal migration in Europe is to a large extent organised by clandestine criminal groups, specialising in smuggling of and trafficking in persons. Due to the very nature of trafficking in and smuggling of persons, the exact number of persons being smuggled or trafficked cannot be determined. The careful estimates into which extent illegal migration is organised by such organised criminal groups vary greatly from low percentages of 10-20 to 50 percent between different political and geographical regions, as well as between different countries, also in the same region. The estimates also depend on the definition on organised crime – some smuggling and trafficking groups, which seem to have some organisational level, do not fulfil the criteria set up in the various definitions on organised criminality. In other words, there is a distinction to be made between organised facilitation and facilitation by organised criminal groups. In this study we will concentrate on the latter case.

32. The above mentioned estimated numbers are considerably smaller in the Northern Europe than elsewhere in Europe. This is why, for the purposes of this paper, it will be concentrated more on these regions, where the estimates are the highest, at around 50 percent of all illegal migrants: Central, Eastern, Southern and Western Europe. The reasons for differences in different regions and for the directions of these illegal movements are manifold and cannot be dealt with within the framework of this paper. It needs to be emphasised that no region or country is completely untouched by the problem and there are indicators and growing number of cases that show organised crime involvement in the smuggling of and trafficking in persons business also in the low percentage countries.

33. According to Europol, those indicators are, *inter alia*, that illegal migrants often travel very long distances, and the greater the distance is, the more likely it is that organised groups have facilitated the journey. Furthermore, they travel in groups, pay high amounts of money for the trip and change the routes often. Moreover, when things

go wrong, there is legal assistance immediately available upon arrival, often offered by same lawyers.

34. The relative size of the problem in smuggling business is much larger than in trafficking in persons business. The great majority of illegal migrants in Europe uses the services of smugglers, who in about half of the cases belong to organised criminal groups, which facilitate the border crossing. The numbers vary between different regions, as explained before. In the low percentage countries, as well as in the other European regions, the trend is rising and there is a growing number of smuggling cases all over Europe.

35. Furthermore, some of the illegal migrants end up in the hands of highly organised trafficking groups, being exploited and used for criminal purposes. The feature of exploitation and usage for criminal purposes, in spite of the smaller relative size of the problem, makes trafficking in persons as serious, if not more serious a problem than smuggling of persons. An interesting observation from the field is that the majority of people being smuggled is actually male, whereas people traffickers more often concentrate on females. Obviously, there are several different categories of people being trafficked and smuggled, some of them just trying their luck, some of them in need of protection. Thus, behind these phenomena, there are obviously more profound problems than we will be able to deal with within the scope of this study and, instead, we will concentrate on trafficking in and smuggling of persons as a problem of organised crime.

Trafficking in and smuggling of persons as problems of organised crime

36. Organised crime groups are opportunity seeking – they go where demand and opportunities are and where the risks are low. This is why organised crime groups have expanded their activities also into illegal migration, both trafficking in and smuggling of persons. As a consequence, also other forms of organised crime spread in such countries of opportunities. This is why also those countries, in particular the Northern European countries, where illegal migration as a form of organised criminality has not been such a big problem yet, have to be prepared to be faced by the problem, i.e. both illegal migration as organised business and other forms of organised crime, to a greater extent. As many European States have restrained possibilities from outside the European Union to enter the joint area, demand for illegal border crossing services have grown and

provided opportunities for organised crime. Organised crime groups have answered the demand and provided illegal border crossing services. Moreover, as States respond to this development by creating more and more obstacles to the illegal movements, the criminal organisations become more and more highly organised and violent.

37. Thus, in Europe, as a response of such restrictions in the policies in the West and the transition process in the East², organised crime groups have answered the demand and incorporated trafficking in and smuggling of persons as an increasingly profitable and lenient-punishment / low-risk part of their activities. As punishments for these activities in many countries are very lenient or even non-existent and in some countries the level of corruption is high, the business has proved to be safe. Compared to e.g. penalties for drug trafficking, the risks in trafficking in and smuggling of persons business are considerably lower in many countries. Thus, trafficking in and smuggling of persons business can be extremely productive and profitable without major risks.

38. Furthermore, as a consequence of the restrictive policies in the West, i.e. that there are often no legal possibilities for third country citizens to enter the joint area, the smuggled and trafficked persons are very dependent on the services of the criminal groups. In addition to this dependency, trafficked persons are also carefully controlled by their traffickers. Furthermore, in particular in trafficking, exploitation is an essential part of the business and it begins the moment people agree on being transported to another country. Often, all caught illegal migrants tell the same story, which indicates that prefabricated “travel stories” have been invented by the criminal organisations. In some cases it has been found out that obligatory training courses were held by organised crime groups in order to prepare smuggled and trafficked persons for investigations. Due to the dependency relationship, illegal migrants abide with these stories. This contributes to the fact that organised crime structures behind the phenomenon of illegal migration are not seen.

39. Such practises and dependency relationships lower the law enforcement risk by making investigations difficult and are typical for organised crime. As a consequence, it is difficult for any outsider to get information on the phenomena. This is also why it is

² For example, ca. 80 percent of all prostitutes working in Central and Middle Europe come from the Eastern European countries. Thus, in especially trafficking in women business, the transition process and

impossible to reliably estimate the number of these people and all the figures mentioned in this paper are rough estimates. Thus, trafficking in and smuggling of human beings are not only problems of migration but also, increasingly, problems of organised crime. Furthermore, the increase in illegal migration, in particular from countries further away from Europe, could also partly be explained through involvement of organised crime groups. Because people using the services of traffickers and smugglers come from all over the world, the problem is certainly a global one. Due to different historical, religious and political backgrounds, as well as geographical position, it is often difficult to co-operate between all the regions in the world. This is why European wide co-operation in the framework of Budapest process would be an excellent starting point.

Organised crime involvement in other types of organised criminality

40. For the maximisation of opportunities, organised crime also tends to expand to other criminal areas. In Europe, many of these clandestine groups have started with other criminal businesses expanding further to trafficking in and smuggling of persons. In the expansion process, the organised crime groups, in particular traffickers, are relying on expertise and contacts gained in the old, often criminal activities, as well as on already tested routes, thus, just adding new activities into the old patterns. In practise, for a criminal group with reliable personnel, already existing means, already tested routes, corruption network and contacts, it is easy to move quickly into new criminal markets and invest the money received to other illegal activities³.

41. According to the expertise of Europol and Interpol, as well as social and street workers and police officers working in the field, drug or gun trafficking, car thefts, burglaries, illegal hiring of illegal migrants, exploitation of prostitution and other forms of sexual exploitation⁴, corruption, immigration criminality, visa and passport counterfeiting, as well as money laundering are organised crime types which have close connections to especially trafficking in persons. In smuggling business, there are

the following difficult economic situation and unemployment in Eastern Europe opened a lot of new possibilities and opportunities for organised criminality.

³ For example, while some years ago criminal organisations dealing with trafficking in women used to restrict themselves mainly to the import of women, they now tend to control the prostitution infrastructure and increase the volume in order to maximise profits. A part of the profits is invested in other criminal activities or in the prostitution industry.

⁴ However, it needs to be emphasised that not all prostitutes are trafficked or exploited but a part of them are working independently and voluntarily. Again, the numbers vary greatly in different countries. In the

connections to at least drug trafficking. It is of great interest to notice that these crime types are the same ones which are on the rise in Western and Central Europe.

42. Thus, there are clear linkages and interdependencies between organised crime and trafficking in, as well as smuggling of persons. In this paper, these interdependencies are analysed. Furthermore, the structures of crime groups organising trafficking in and smuggling of persons are explained. First of all, however, concepts of trafficking in and smuggling of persons are clarified.

What is trafficking in and smuggling of persons?

The Prague Conference

43. The definitions of the concepts “trafficking in” and “smuggling of” human beings and organised crime are subject to a lot of discussion. Since definitions affect the scope of this study, they need to be further worked on. With regard to trafficking, the preambular part of the Recommendations of the Prague Ministerial Conference underlines that “an efficient and harmonised effort against in particular the organised and/or professional trafficking in aliens requires a common understanding of the term “trafficking in aliens”.

44. For that purpose the Ministers noted “that activities constituting trafficking in aliens i.a. include the following: abuse of legal migration facilities, facilitating illegal border crossing, illegal entry and/or stay, unauthorised transit, production, provision and use of fraudulent documents, abuse of genuine documents, providing advice and/or means to make fraudulent claims before authorities, arranging transportation, harbouring facilities and illegal employment”. However, the above mentioned list of characteristics was meant to be only directive and did not necessarily include all the characteristics of trafficking in and smuggling of persons. The Ministers then stated in their recommendation 1:

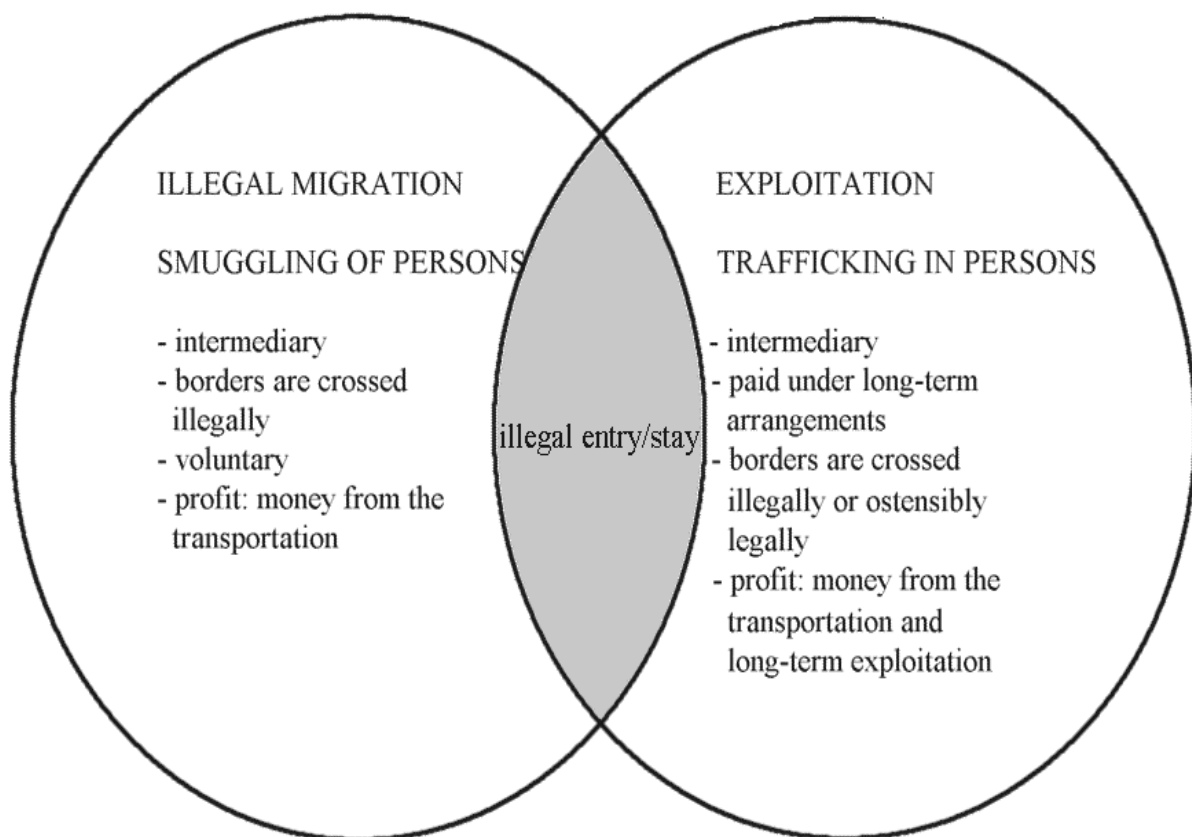
that a common understanding of the term “trafficking in aliens” should include activities intended deliberately to facilitate the border crossing or residence of an alien

Netherlands, an estimate of 80 percent of prostitutes are being trafficked to the country. In Finland, on the other hand, the percentage is very low, roughly around 10.

in the territory of the State, contrary to the rules and conditions applicable in such a State.

The need for a distinction between trafficking in and smuggling of persons for the purpose of the present paper

THE DISTINCTION BETWEEN SMUGGLING OF AND TRAFFICKING IN PERSONS



45. For the purposes of this paper, a clear distinction will have to be made between trafficking in and smuggling of persons. In the Prague Ministerial Conference those two concepts were not distinguished from each other. However, since the interdependency with other forms of organised crime in form of exploitation is stronger in trafficking in persons than in smuggling of persons business, and exploitation or introduction into criminal circuits is an integral part of the concept of trafficking in persons, this distinction is necessary for this study in order to understand the phenomena from the organised criminality point of view. Similar distinctions are utilised by Europol and Interpol. These two phenomena, trafficking in and smuggling of persons have strong interlinkages and much in common but there are also great differences. Due to the

interlinkages, the concepts sometimes overlap. On the other hand, due to the differences, it is important to make the distinction in order to facilitate research and gathering of information on these phenomena.

Trafficking in persons

46. Both trafficking in and smuggling of persons represent a form of irregular migration. The English legal term “trafficking” means (illicit) trade. Thus, trafficking in persons is trade in human beings, which takes place illicitly. However, according to several studies, persons trafficked for exploitation purposes may sway between legal and illegal status during the exploitation period. This is why phenomenon of trafficking in persons cannot strictly be defined as illegal but rather as irregular, the status of these persons being illegal at least at some stage of their journey or stay.

47. The notion of trafficking in persons comprises several features. Firstly, it requires an intermediary, a trafficker, who provides the necessary services facilitating migration. Such services include, for example, provision of information, stolen or counterfeited documents, official or unofficial transport, accommodation during the journey, border crossing services and introduction into criminal circuits. These services create strong dependencies between the trafficked person and the traffickers. Still, at the beginning, the trafficked persons often see the traffickers rather as heroes than exploiters, which makes it difficult to get information on traffickers.

48. Secondly, the traffickers are often paid under long-term arrangements for these services. Since the fees together with high interest rates are high, it is typical for trafficking in persons business that the payment leads to a debt bondage, thus, creates more dependencies between the traffickers and the trafficked person. Often, the whole family, parents, children and spouses, are involved in paying back the debts and threatened consequently. Due to these threats and misinformation given by traffickers, trafficked persons distrust the law enforcement agencies and are afraid of their personal and family security and, thus, do not reveal the traffickers even when the debt bondage leads to virtual slavery.

49. Thirdly, during the transportation to the destination country, international borders are crossed, in most of the cases either illegally or ostensibly legally. Illegal border

crossing takes place by avoiding border control or by presenting false, stolen or counterfeited documents. Ostensibly legal crossing of borders is made *in mala fide*, *mens rea* being to reside in the country illegally. Trafficked persons may enter the country legally by using e.g. tourist, entertainment, student or business visas and remain unlawfully after the expiring of the visa. Some traffickers also, as typical for organised crime groups, establish legal structures, such as language schools or vocational institutes, that cover illegal intentions. In illegal migration, this is a common feature. Moreover, fictitious marriages may be used and it is in some countries even a common occurrence to mask trafficking operations. On the Internet, there are hundreds of addresses, where one can order a wife for himself. In these sites, there are also minors for sale.

50. Thus, the intention of the stay in trafficking in persons is represented wrongly, *inter alia*, giving false, altered or inaccurate facts. In some cases, however, the border crossing takes place legally and *in bona fide*. In other words, according to Europol and Interpol, some legal migrants already residing in a Western European country, turn to illegal work. A lot of them are recruited from the migration community of the European Union Member States. Especially in case of prostitution, they underestimate the degree of violence to which they will be submitted. Upon arrival in the country, the migrants are then, with or without their consent, introduced into illegal activities. As a consequence, the stay in the destination country is illegal. Thus, in all of the cases in trafficking business, either the journey or the stay at some stage is illegal.

51. Fourthly, the traffickers profit from the above mentioned activities, in addition to the payment made for the transportation, by exploiting the trafficked person and introducing her or him into criminal circuits. Such criminal circuits may include, *inter alia*, illicit labour⁵, organised begging, pick pocketing, exploitation of prostitution, other forms of sexual exploitation, trade in children, including forcing children into prostitution, or drug trafficking. Often, the trafficked persons are rotated, in other words, sold⁶ or exchanged between different countries or in between different criminal

⁵ Illicit labour include, *inter alia*, work under the table in restaurants and hotels, the textile industry, i.e. sweatshops, as street vendors, in construction, as seasonal workers in agriculture and a variety of service and manufacturing industries.

⁶ A German media report "Klaukinder für Köln" highlighted a smuggling ring that brought more than 100 children from Romanian parents and orphanages for 500-1000 DM each. They were smuggled to Poland for training and then to German cities to work as pickpockets. The children were raped, beaten, cut with

groups and used for different criminal purposes. At this stage they also often receive a new identity.

52. Thus, the profit in trafficking business comes from a long-term exploitation of the dependent trafficked person. It needs to be clarified, however, that the concept of exploitation does not necessarily mean direct coercion but violation of human dignity and fundamental rights, abuse of the vulnerable situation of many of these people, making them dependent on their traffickers and treating them as trade products rather than as human beings.

53. Exploitation may include, *inter alia*, facilitating the illegal movement of persons to other countries even without their consent, most often, however, deceiving the trafficked persons about the purpose of migration, i.e. fraud, including misinformation about law enforcement, abuse of human beings for the purpose of trading/selling in human beings for different purposes, blackmailing, intimidation or violence, including beatings and rape. According to Interpol experience in Europe, the traffickers are becoming increasingly violent and are more and more prepared to use all kinds of measures in order to achieve their goals. There are also indicators showing that abduction is increasingly replacing false promises as a method for recruiting women.

54. Many definitions of the phenomenon describe voluntary choice from the trafficked persons point of view as an additional requirement. Certainly the great majority of the trafficked persons makes a free choice to leave their countries voluntarily. The image of an affluent West conveyed by media, films and magazines as well as from friends and relatives who have made it, which does not correspond with reality⁷, often contributes to the trafficked persons' decision to leave.

55. In these cases, even though many trafficked persons actually make a seemingly free choice to enter or stay in a country illegally, they are often, in addition to the false picture conveyed by media, deceived by traffickers by false promises or even in some cases coerced by threat or violence. Typical forms of intimidation and violence are,

razor blades, and forced to eat their excrements if they did not co-operate or did not meet their daily goal. They were further sold to other criminals for more than 20.000 DM each.

⁷ Prevention programmes, both primary and secondary should focus on raising awareness on the effects of being trafficked. Good results have been reached in Eastern Europe where there seems to be more awareness on the circumstances in the destination countries than in other parts of the world.

inter alia, beatings and kicks, as well as threats thereof, pressing burning cigarettes against the skin, pulling off earrings, denial of food, feeding drugs and tranquillisers, sexual exploitation and rapes, locking-up and constant control and watching, threats with guns, threats to send humiliating photos and videos to the home country, as well as murder. The use of abduction is increasing in trafficking business.

56. In a great majority of cases, according to various sources, an estimate of 80 percent of all the illegal migrants, there is total awareness on the work but no or lacking awareness on the circumstances that are expecting the trafficked persons in the destination countries. In the rest 20 percent of the cases the trafficked persons are even deceived of the nature of work that is expecting them. In such cases, the trafficked persons often end up in virtual slavery in the destination country. The numbers mentioned here are not applicable to all countries and naturally vary in different regions.

57. In the majority of cases, where deception, not to talk about coercion, the use of which according to Interpol is increasing, is the motivating factor, voluntariness of the movement cannot play an elementary role in the definition. Moreover, even if the trafficked persons freedom of choice is real, the circumstances in which they are sometimes held without their consent – their human dignity violated, deprived of their liberty or denied of other fundamental human rights, including misinformation about law enforcement and their rights, constant surveillance, instances of violence and extreme pressure, passport and other travelling document confiscation, withholding of salaries and abuse - make it questionable in all cases to talk about voluntary choice to this kind of treatment. Voluntariness to opt for illegal migration and work does not mean consent to such a kind of exploitation and this is why voluntariness or involuntariness of the movement is not essential for the purposes of the study.

58. The goal of the whole process of trafficking in persons is the exploitation of the trafficked person for criminal purposes, and crimes committed on the way are just steps towards exploitation. In other words, in trafficking business introduction to criminal circuits, exploitation for criminal purposes is an integral part of the phenomenon. This feature also makes the issue of trafficking in persons a human rights issue and justifies the argument of the phenomenon being a modern form of slavery. The element of exploitation and usage for different criminal purposes distinguishes trafficking from

smuggling of persons and forms a strong linkage between illegal trafficking in persons and other forms of organised crime.

Smuggling of persons

59. Hence, for the purpose of this paper, the phenomenon of smuggling of persons is being distinguished from trafficking in persons. The concepts of trafficking in and smuggling of persons partly overlap but there are also great differences. Smuggling of persons is an illegal form of migration. The English legal term smuggling means import or export, which takes place illegally. Thus, smuggling of persons means illegal transportation of human beings from the source country (export) to the destination country (import). The phenomenon is without exceptions illegal and, thus, easier to define than trafficking in persons.

60. Smuggling of persons comprises several features, which are partly common with the phenomenon of trafficking in persons. Firstly, it requires an intermediary, a smuggler, who facilitates the border crossing but does not provide his/her clients with such extensive other services like in trafficking business. Services such as provision of travelling documents, stolen, falsified or counterfeited as well as “care” during the transportation are, however, in some cases included in the business. The border crossing can take place by land, waterways or air assisted by smugglers who belong to clandestine groups organising smuggling business. For the border crossing the smugglers often have the latest techniques, faster vehicles and better equipment than the border control. These sophisticated technological methods to circumvent the border control include, for example, low-flying helicopters, speed-boats and modern radio-communication.

61. These investments show a certain organisational level with continuity, which indicates organised crime involvement. Furthermore, as typical for organised crime, in some cases the transportation takes place in such circumstances that exploitation becomes a part of the smuggling business, as well. Due to the negligent attitude of organised criminal groups, there are several people dying during the transportation. In general, however, smuggling does not include a component of exploitation.

62. Secondly, international borders are crossed unexceptionally illegally. In other words, border control is often avoided. For this purpose, the illegal journey takes often place in the night and there are often several smugglers taking care of different tasks during the illegal journey. The smugglers have good connections and are well aware of circumstances in different countries and choose the routes accordingly. In addition, corruption is often used at this stage of the process.

63. Thirdly, the movement is fully voluntary. Smugglers are considered heroes assisting in the border crossing rather than criminals abusing the difficult situation of many of these people. This situation becomes more understandable when the circumstances in the 60s and 70s are kept in mind: during the iron mask facilitators of border crossing were celebrated, courageous heroes. Now, from one moment to the other, they should be regarded as criminals. Even if the goal of these organised groups is monetary profit and clandestine journeys often take place in dangerous circumstances, the attitudes in the minds of people do not change so fast.

64. Finally, the profit from the smuggling business comes from the fee the smuggled person is paying for the smuggler. Contrary to trafficking in persons business, this fee is typically paid under short-term arrangements, i.e. in advance or directly after the successful transportation. Thus, debt bondage is usually not practised. The fees for the smuggling services range widely, as they depend on where the illegal migrants come from and change according to the circumstances in the transit and destination countries. Increasingly, for the smuggled person there is often no financial risk in getting caught since some smugglers guarantee success of the transportation. Thus, after the deportation, the game starts from all over.

65. To generalise, in smuggling of human beings, the criminal groups are rather specialised and in some cases concentrate only on smuggling, whereas in trafficking business, the organised crime groups always participate in other criminal activities and other forms of organised crime, including smuggling. In other words, to generalise, smuggling of persons is not always in a direct, strong horizontal interdependency relationship with other forms of organised crime, whereas in trafficking business such interdependency is obvious. In the following, these interdependencies are analysed.

Interdependency between organised crime and trafficking in and smuggling of persons

66. Organised crime as a concept is no distinct type of crime but a complex phenomenon of criminality - a process or method of committing crimes. A big part of organised crime can be understood as control criminality. Such separate crimes, control criminality, is often not recognised as organised criminality but as distinct crimes and, as a consequence, criminal structures behind the activities remain undisturbed. Thus, interdependencies between different types of crimes need to be recognised in order to tackle organised crime. Typical for organised criminality are vertical and horizontal interdependencies. Also smuggling of and, in particular, trafficking in persons as forms of organised crime consist of and form these interdependencies.

67. Firstly, vertical interdependency means that organised crime consists of chains of individual crimes, which are in close relationship with each other. Crimes committed on the way to the final goal are just steps towards the end-result. Thus, in trafficking in and smuggling of human beings business, corruption, counterfeiting of travelling documents, violation of immigration laws etc. are just intermediary steps towards the wanted end-result: in smuggling towards the short-term monetary profit and in trafficking towards long-term exploitation of human beings for economic or other gain. According to statistics, all these above mentioned forms of organised crime are on the rise in Europe.

68. Secondly, horizontal interdependency means that there are diversified connections between different criminal activities by the same organisation. As explained before, there is a strong horizontal interdependency between trafficking in persons and other forms of organised crime, whereas horizontal interdependency is not so strong for smuggling of persons, because of the higher specialisation grade in smuggling and sometimes looser structures of smuggling groups. However, according to Europol, smuggling groups are often involved also in at least drug trafficking.

69. In trafficking in persons business, the criminal groups are very strongly involved in different types of criminal activities, such as drug and/or gun trafficking, car thefts, burglaries, illegal hiring of illegal migrants, exploitation of prostitution and other forms of sexual exploitation. In trafficking business, exploitation of prostitution is of its

magnitude the greatest problem and the traditional “pimp” is in some countries replaced by a criminal organisation. This is why the business is also becoming more and more violent. Furthermore, money received from all illegal activities needs to be laundered. All these forms of organised crime are increasing in Europe.

70. Still, groups involved in several forms of organised crime are structured so that different sub-groups are specialised in different activities. In other words, the level of diversification of tasks inside the criminal organisation is high. As a consequence, the participation of a criminal group in different criminal activities is not clearly visible to the outside world. The trend of diversification of organised crime groups will be explained later on in this paper.

71. In the trafficking in persons business the trafficked are used as personnel for those other criminal purposes, such as, *inter alia*, illicit work, organised begging, drug trafficking, exploitation of prostitution and other forms of sexual exploitation. Thus, the horizontal interdependency is particularly profitable in trafficking in persons, since organised crime yields profit from both the trafficking itself and from the following exploitation of the trafficked persons as manpower for criminal purposes. This double use makes trafficking in persons business competitive with drug smuggling in productivity and explains why even most structured and biggest organised crime groups have incorporated trafficking in persons into their activities.

72. The need for manpower for other criminal purposes plays a role also in the organised crime groups’ decisions, how many people are trafficked in and which country will be the destination of these people. Thus, after the need for manpower in a country is satisfied, the traffickers will not traffic more people in for other criminal purposes but rather smuggle willing ones for purely monetary profit. As a consequence, organised criminal groups actually regulate illegal migration flows to a great extent and organised criminality actually contributes to illegal migration. In both businesses, the profits gained can be invested to other criminal areas and, for that purpose, the criminal structures need to be organised enough in order to render it possible. In this way, illegal migration then in its turn contributes to organised crime.

73. Thus, organised crime in the destination country creates trafficking in and smuggling of persons and they in their turn create organised crime. In other words, firstly, trafficking and smuggling groups are to a large extent very organised criminal groups and, secondly, they are involved also in other types of organised criminality. These interdependencies imply that fighting one form of organised crime, including structures of the clandestine groups, in particular management level, tackles also other forms of organised crime.

74. This is why more focus should be laid on fighting against organised crime groups behind smuggling of and trafficking in persons business. Furthermore, in the fight against organised crime, such interdependencies among different crime types should be paid attention to. Often, the interdependencies are not clearly visible and need to be investigated more carefully. For that purpose, sensitisation to these linkages is needed. By this, by dissolving criminal organisations involved in trafficking in and smuggling of persons business, hundreds of illegal migrants can be prevented from coming into the joint area and endangering their health and lives during the journey and following exploitation processes.

75. Furthermore, it does not suffice if attention is paid only to the working level caught in action in trafficking in and smuggling of persons business. As a consequence of the high specialisation level inside the organised crime groups, if only individuals at the grass root level of the organised crime group are caught, without trying to dissolve the structures or the management of the group, no sustainable results in the fight against organised crime may be achieved.

Trafficking in and smuggling of persons as businesses

76. Organised crime groups, including trafficking and smuggling groups, function as any legal economic organisation. The ultimate goal of organised crime, as any legal economic organisation, is to gain profit. In order to optimise the profits, monopoly is always aimed at by criminal organisation, especially in conditions of a relatively small market. As a result of an increased demand from both potential migrants' and exploiters' side, the market in illegal migration is flourishing. Considering the restricted possibilities to enter Western countries legally, organised illegal business is heavily on the rise. As a consequence, there are several criminal organisations involved in the

business and the profits for organised criminal groups are continuously increasing. Furthermore, because of the increased demand, internal competition among organised criminal groups is rising and leads to increased violence and, as a consequence, to the fact that organised criminal groups often operate in different territories.

77. As mentioned already before, the relative size of the problem is much larger in smuggling business. The profit in smuggling business comes from the transportation and, as markets are flourishing, the profits are good. On the other hand, trafficking in persons is a particularly clever form of organised crime, since the profit comes from both the trafficking fees and from the following exploitation. In the exploitation process, the illegal migrants are introduced into other existing criminal activities, used as manpower for these purposes and sometimes held in virtual slavery. By the increased use of threat, force and violence, the trafficking groups achieve more power in the criminal markets. Firstly, the use of threat, force and violence serves to reach the monopoly position in the criminal market. Secondly, it serves to put the victim in a state of constant fear and, as a consequence, prevents her or him from going to the authorities.

78. In this way, the organised crime groups have, by expanding their activities into trafficking in persons business and keeping these illegal migrants under control, satisfied the need for manpower for their other criminal purposes. As a consequence of this double use, trafficking in persons has become one of the most profitable and low-risk activities of organised crime. This is why always new organised criminal groups are expanding their activities into trafficking in and smuggling of persons business and spreading several forms of organised crime to new market areas. The profits gained from one criminal activity can be invested to other criminal areas.

79. In order to cover these illegal activities of trafficking and smuggling, organised crime groups often expand their activities into legitimate businesses. These practises are typical also for trafficking in and smuggling of human beings business. As mentioned already, structures such as travel agencies, language schools, vocational institutes, as well as shipping companies are used in order to cover illegal intentions. As a consequence, *modus operandi* between legal and illegal activities is becoming more difficult to distinguish. By this, organised crime groups, in addition to covering their

illegal businesses, gain respectability and power. Furthermore, it is also a way of laundering money received from other illegal activities⁸.

80. After all, the goal of organised crime is to become an integrated or a parallel part of life in a society. In order to reach that position, organised crime tends to use measures such as blackmailing, intimidation, violence and corruption. According to Interpol, it is a common trend that organised crime groups involved in trafficking and smuggling businesses are prepared to use more and more violence in order to reach their goals. Especially in trafficking in persons business this feature of organised crime plays a crucial role and makes it extremely difficult to get information on the phenomenon.

Recent trends in trafficking in and smuggling of persons business

81. These new activities of organised crime in Europe, trafficking in and smuggling of persons, generated by new market opportunities offered through the transition and integration processes in Europe seem to induce criminal organisations in two different directions: specialisation and diversification. The trend towards specialisation is due to the fact that expertise and skills are necessary for overcoming the increased obstacles for entering the destination countries in Western Europe. Smaller groups are often specialised in either smuggling of or trafficking in persons and, in that way, have the needed expertise. Big criminal structures of the organised crime groups allow for hiring experts and, in this way, satisfying the need for specialisation. The pattern of diversification means that organised criminal groups have started to a larger extent to expand their activities into several different areas in order to maximise profits and minimise risks. Furthermore, organised crime also tends to diversify tasks within the organisation. That will be dealt with later on.

82. These developments are due to the fact that there is increased competition among criminal organisations. Several groups, of one ethnic origin or from mixed ethnicity, are fighting for the same market opportunities. As a consequence, in order to gain local expertise and, thus, increase the advantage over competitors, organised crime groups, in particular big criminal organisations, have started to form alliances with each other in

⁸ For example, Chinese restaurant owners in Europe, who are in some way with or without consent involved in smuggling of and trafficking in persons business, sometimes receive orders from China to enter into a joint venture with a company established there. The illegal profits are then invested in the business in order to launder money from illicit activities.

different countries. For example, one U.S. non-governmental organisation called the Global Survival Network found that Russian criminals had trafficked women to brothels and clubs in Japan, Macau, and Hong Kong, in some instances co-operating with the Japanese Yakuza. Russian criminals had also allegedly co-operated with Turkish and former Yugoslav crime groups in trafficking women to Western Europe. The Italian organised crime is probably co-operating with Albanian groups to control the Balkan route.

83. In trafficking in persons business these synergies and co-operation facilitate the exploitation and rotating process and are, thus, necessary. Furthermore, when law enforcement risk grows too high, the criminal organisations sell or exchange trafficked persons to other organisations, which give them a new identity. According to Interpol, for some networks, co-operation between these organisations, in other words, some sort of outsourcing, is also necessary in order to obtain all illegal services needed, including the above mentioned new identity. In outsourcing, criminal services are exchanged for other criminal activities. For example, in an undercover operation conducted in the USA against Chinese smugglers, the Chinese smugglers had asked for provision of travel documents against heroin.

84. This means that distance between management and working level of a crime group in many criminal organisations is becoming increasingly bigger, which in turn decreases the law enforcement risk. In other words, the trail of evidence linking the crime and the organised crime structure, especially its management, becomes difficult to discover. Furthermore, organised crime tends to change according to circumstances and, thus, today's information might be old tomorrow. Flexibility is what makes organised crime so successful. In the following, an attempt to clarify the structures of organised crime groups will be made.

Structures of an organised trafficking in and smuggling of persons group

85. Basically, there is not a typical organised crime group involved in trafficking in and smuggling of persons business. Structures of these groups range from loose amateur groups, which concentrate on smuggling of human beings and same routes, to international structured organisations specialising in trafficking in persons for exploitation purposes. There are single people, small and larger networks composed of

persons from the same region or family members, as well as strictly organised and hierarchical structured organised criminal groups involved in the business. Increasingly, however, the individual smugglers or traffickers are replaced by better organised criminal organisations.

86. The majority of these groups is firstly, ethnic groups which concentrate on their own nationals⁹ and secondly, big criminal organisations, which expanded their activities further to trafficking in and smuggling of persons, because of the great profits. In most of the cases, Europeans concentrate on Europeans, Africans on Africans and Asians on Asians, however so, that there are Europeans from the destination countries involved in the business. This can be explained, *inter alia*, through language barriers, geographical position and historical links between different regions. Still, many of the larger and more widespread networks involve several nationalities in order to maximise profits.

87. Thus, it is not possible to describe a typical group involved in the business. This is why, generalisations are necessary in order to be able to understand the structures of trafficking in and smuggling of persons groups. To generalise, in trafficking in persons business, there are big organised crime groups behind the activity. The element of exploitation explains, why trafficking groups need to be highly organised and international. Big structures are necessary for the management of these groups, which are without exception working in other criminal fields and involved in other forms of organised crime, such as exploitation of prostitution and other forms of sexual exploitation, drug¹⁰ and gun trafficking and organised car thefts, as well as burglaries. Trafficking groups can be active also in smuggling of human beings.

88. Smuggling of persons does not usually include the component of exploitation – it only comprises the illegal journey. A minor part of smuggling groups have entered the market because of the growing demand and blooming business but have only loose, temporary structures and do not plan their actions as carefully as organised crime

⁹ Traditionally, members of ethnic communities in the destination countries were the facilitators of migration. They provided necessary support for the migrants. Recently, these traditional networks have been replaced by or incorporated into professional ethnic networks.

¹⁰ For example, in Germany, it was found out that Kurd children, who were smuggled into the country, were used also as drug couriers. Turk or Kurd “uncles” took care of the children and they were further used for drug dealing on the streets and to other German cities. In Switzerland, Albanian children were caught in November 1998 carrying drugs. Here, the criminal irresponsibility of minors was abused by the criminal organisations.

groups. However, also in smuggling of persons business, the majority of groups is from the technical point of view very organised.

89. Factors, such as investments on high technology, good connections in different countries, guaranteed success of transportation, continuity and specialised transportation units show organisational structures behind the operations. On the other hand, since the profit of smuggling businesses comes only from the illegal journey, the smuggled persons do not need to be misled and then further controlled as in trafficking in persons business. Thus, big organisations with supervising personnel are not always necessary for the smuggling business.

90. The majority of smuggling of persons groups is often specialised in smuggling of persons. They are not to that extent involved in other forms of organised crime as trafficking groups. However, according to Europol, smugglers are often involved in at least drug trafficking. Furthermore, as organised criminality is always seeking for new opportunities, it is likely that also smuggling groups expand their activities into other criminal areas. In the following it will be explained how these criminal organisations function. As a consequence, it also becomes easier to understand, how easy it is to a criminal organisation to swift from one activity to another.

Diversification of tasks in organised crime

91. Such organised criminal groups, both traffickers and smugglers, have strict structures, hierarchy and dependencies. As mentioned before, some of the groups are more, some less hierarchic structured. In other words, organised crime groups have great differences in their structures in different countries, which should be taken into account when defining the concept of organised crime. The tasks of a criminal group are diversified among different units or elements, which then independently carry them out. These units or elements, which may consist of one or more persons, are highly specialised, independent and know very little about other parts of the organisation. In this way, the law enforcement risk is minimised. In other words, if an individual is caught, diversification of tasks ensures that the whole organisation will not be affected. Such diversification of tasks explains also why there are only little cases of illegal immigrants and, for example, drugs found together. While the trafficking in both

persons and drugs is often organised by the same organised crime groups, the tasks are diversified among different elements in order to minimise the law enforcement risks.

92. In particular in trafficking business, this diversification is two-fold: different units are taking care of different criminal activities and elements further of different tasks for a criminal act. In smuggling of persons business, different elements are taking care of different parts of the smuggling operation. Several elements can be identified in the organised structure. Because in trafficking in persons operations the organised structures are more complicated, this example concentrates on trafficking in persons group. Depending on the size of the group, some of the elements may merge.

(i) Recruitment element: This element is responsible for the recruitment of potential willing people in the sending countries. People's hope for a better life is abused and they are lured by false promises. The recruitment proceedings vary from locals, friends and relatives pursuing people to leave their homes for better opportunities, to advertisements in the newspapers and on the internet to various kind of legal agencies. In the latter case, illegal activities are covered into legal activities, which is very typical for organised criminality.

(ii) Transportation element: This element is responsible for the transportation. Transportation may take place either by land, waterways or air. Traffickers perception of weak links in the geography of control system determines the destination country and form of transportation. Also the need for manpower for criminal purposes plays a role in the decision. Different transportation elements take care of the transportation in the sending country, in the transit countries and in the destination countries. Typical features for organised crime, i.e. dependencies between different elements and careful planning of the operation, are obvious.

(iii) Corrupted Officials: In the trafficking in persons business, the co-operation of authorities plays an important role in the development of a permanent trafficking structure. Law enforcement officials in many sending, transit and destination countries are bribed to help illegal migrants to enter and exit their countries. Corruption is an elementary part of organised crime.

(iv) Guide element: This element is responsible for helping the illegal migrants to move from one transit point to the other. Local agents are often used for this task. This minimises the risk of law enforcement since the local agents know very little about the organisation.

(v) Supporting element: This element is responsible for providing all the supporting services, in particular safe houses, needed for the illegal migrants. By providing all the necessary services, such as accommodation and food, the illegal migrants do not have contacts to the normal society and, thus, remain totally at the mercy of their traffickers. This creates dependencies among the trafficker and the trafficked person and in that way facilitates exploitation process for criminal purposes.

(vi) Debt collecting element: This element is responsible for keeping illegal migrants in the safe houses and collecting the transportation fees. As illegal migrants hardly ever can afford to pay back the fees, the element then introduces them into criminal circuits and the debts are paid back by illegal activities. Such debt bondage is a very efficient control mechanism and creates a very strong dependency between the trafficker and the trafficked person, which is typical for organised crime.

(vii) Management level: This element manages the whole structure, is carefully planning the chain of illegal activities and supervises the whole operation and the complex structures of the organisation. In other words, the management level links the offences together, organises a sort of illegal chain of offences. For the implementation of activities, this link is crucial. This level is rarely known to the lower elements involved in the trafficking business, which makes fighting against organised crime difficult.

Routes

93. There are several routes for trafficking in and smuggling of persons in Europe. The routes change according to several factors, *inter alia*, geographical position, distance between countries of departure and destination, political situation and law enforcement efforts in different areas, as well as corruption. Organised crime groups are flexible and always prepared to adapt to changing circumstances. Thus, routes used for trafficking in and smuggling of persons are changed according to the new circumstances. Routes are

actually sometimes changed from one day to another. Furthermore, in most of the cases, there are in any way several varieties and possibilities among which the criminal organisations can choose.

94. An old truth is that criminal groups rely on expertise, skills and means acquired in the old activities. When expanding to new criminal areas, the new activity is often added into the old pattern. As criminal groups in Europe have often started with other criminal activities, the old, already tested routes are then used for the new activity of trafficking in and smuggling of persons. Thus, for example routes used for drug trafficking are now further used for trafficking in and smuggling of persons business. In this way trafficking and smuggling organisations also increasingly choose the directions of migration flows.

95. Because the routes used by criminal organisations are, firstly, never straightforward, secondly, various and, thirdly, constantly changed, it is extremely difficult to provide up-to-date information. The following main transit countries can be identified in the trafficking in and smuggling of persons, both citizens and third country, operations. As found out by an Expert Group of the Budapest Process, the Eastern States account for the majority of irregular movements to Europe. Countries in that region are also used as a last stop on the way to their end destination.

96. As mentioned before, in the Northern Europe, the problem of trafficking in and smuggling of persons is of much smaller magnitude than elsewhere in Europe. The Northern routes go through Russia and the Baltic States, i.e. Estonia, Latvia and Lithuania, and from there firstly, to the Nordic countries and further from the Nordic countries elsewhere to Europe. As a matter of fact, the Nordic countries are often seen as transit countries rather than as countries of destination.

97. In the European regions, where the problem of trafficking in and smuggling of persons is of greater magnitude, the Balkan route is probably the most notorious route used by criminal organisations. Due to the wars in the region, however, traffickers and smugglers increasingly started to use other routes and Balkan countries became major countries of origin. At the moment, Yugoslav citizens are the biggest group involved in trafficking and illegal migration. As a consequence, also trafficking in and smuggling of

persons business is blooming in the area and Albania has also become a transit country for smugglers and traffickers.

98. Poland has become one of the countries through which migrants are transported. Two main migration routes lead through Poland. The Eastern route, which starts from Belarus and leads further to Moscow, is used to transport Asians and Africans. The Southern route is most often used by Balkan residents, for example Romanians. Trafficking and smuggling rings operate along major truck routes, for example the road from Warsaw to Berlin. In addition of being a transit country, Poland is a country of origin especially in trafficking business.

99. In Hungary, the country's modern infrastructure is intensively used for trafficking and smuggling purposes. For example the road from Budapest to Vienna is a popular route for many traffickers and smuggler organisations. As a matter of fact, the great majority of illegal migrants entering Central Europe illegally have actually come through Hungary, often via Croatia and Slovenia, sometimes also Slovakia. Most important countries of destination from or through Hungary are Austria, Belgium, France, Germany, the Netherlands, Italy and Spain. These countries are also in general in most of the cases the most popular countries of destination.

100. As regards smuggling and trafficking organisations, a bit more in the South and the East, the trafficking and smuggling routes go through countries such as Ukraine, the Czech and Slovak Republic. Especially Prague has developed to an important transit point to people from the Middle and Far East, as well as from Balkan and Former Soviet Union. Also countries such as Moldova, Belarus and Ukraine are countries of origin, whereas Germany is usually the preferred destination.

101. Further to the South, Bulgaria and Romania are often used as the most southern route from Eastern Europe. At least some trafficking groups seem to use Bulgaria as a transit country to Turkey and elsewhere to Russian, Ukrainian, Georgian and Chechen women for prostitution. One known green route goes via Bulgaria, Romania, Hungary and Austria, or Check Republic and Germany, another via Bulgaria and Greece, Macedonia, Albania, and finally over the sea to Italy and further to Europe.

102. The Mediterranean blue route crosses the Mediterranean bringing people from Africa and Asia through North Africa to Europe. The flow from the south to the north is mostly via Greece, Italy and Spain. Also Greek islands are used as transit points on the way to Italy and from there further to Western Europe. Naturally, these above mentioned Mediterranean countries, as well as recently also Portugal, have become popular countries of destination to this route.

Some criminal organisations involved in trafficking in and smuggling of persons business

103. The political development in the last decades in Europe has led to the fact that, in addition to more traditional organised criminal groups such as Italian and Asian organisations and Latin American Drug cartels, there are several new transnational organised criminal structures working in Europe. Those are, *inter alia*, organised crime groups from the former Soviet Union, from South East Europe and Africa.

104. In the following, some of the criminal groups claimed to be involved in trafficking and smuggling businesses in Europe will be introduced. The organised crime groups introduced here are certainly not the only ones involved in trafficking in and smuggling of persons business. The reason, why precisely these groups were chosen, is simple: there is more information available on these bigger criminal structures. Furthermore, it seems that different criminal organisations operate in different territories. This development is partly due to language problems, geographical position and historical links but mostly, due to the criminal organisations' fight for same markets and striving for monopoly.

105. There are indicators that show that at least organised crime groups from Afghanistan, China¹¹, Iran, Kosovo¹², Nigeria, Pakistan and Turkey have been involved in both drug trafficking and trafficking in and smuggling of persons in Europe. There have been cases in different European countries, for example in Germany, Poland and Russia, where authorities have been able to find large amounts of narcotics from the caught traffickers and smugglers. Organised crime groups from Turkey are further

¹¹ Most of the Chinese illegal migrants are from the rural areas in the southern provinces of Guandong, Fujian and Zhejiang, where unemployment is a great problem.

¹² Due to the political situation in Kosovo at the moment, the problem of trafficking is of huge magnitude. Also children are claimed to be forced into prostitution.

suspected of being connected to firearms, vehicle theft and black labour. In the case of Turkish organised crime groups involved in trafficking in and smuggling of persons, there are indicators that show connections with militant groups. A particular problem is posed by PKK being involved in drug smuggling, as well as terrorist activities in several European States. Thus, the horizontal interdependency between other forms of organised criminality and trafficking in and smuggling of persons is obvious.

106. Furthermore, the Nigerian organised criminal groups have been caught in various activities in connection with trafficking and smuggling, *inter alia*, frauds, counterfeiting of checks and other documents, the so-called Nigerian Business letters, prostitution, drug trafficking¹³ and money laundering. In the case of Nigerian organised crime, it is interesting to notice that the criminal groups specialise in quite different activities in different countries. Also other nationalities, such as Albanians and Romanians, have been involved in counterfeiting or stealing of documents and then using them for other criminal purposes, such as trafficking in persons. Also Turkish groups have been caught of producing counterfeited documents, including passports. Here, vertical interdependency between different forms of organised crime is obvious.

107. Moreover, the Chinese organised criminal groups are involved in different kind of illegal activities. The German Bundesnachrichtendienst has stated in an open report that the most common activities of Triads are drug trafficking, gambling and trafficking in persons. They have specialised in smuggling of and trafficking in persons for, in particular, illicit work and are known to be very violent¹⁴. The illegal migrants they hire have been, for example, working in Chinese restaurants or sweatshops or selling computer parts¹⁵. They have been held in slavery like conditions and worked basically around the clock, which from a European point of view must be regarded as exploitation. According to Europol, Chinese Triads are, however, rarely involved in trafficking in women for sexual exploitation.

¹³ For example, the famous Nigerian woman, Semina, was found to be involved in prostitution. The “cousin” who provided her with an air ticket and false passports has been involved in Italy for drug trafficking and her husband is known in prostitution circles.

¹⁴ For example, in the Netherlands and in Great Britain, there have been a number of serious violent crimes in the Chinese community, which are in some way related to smuggling of and trafficking in persons.

¹⁵ There have been cases of also Sri Lankans and former Yugoslavians working illegally.

108. It is the Japanese Yakuza groups that have specialised in trafficking in women, also from China, for sexual exploitation purposes. According to the above mentioned open report by Bundesnachrichtendienst, Yakuza and Chinese Triads are actually co-operating in the field of trafficking in persons. Yakuza is also co-operating with other big transnational criminal organisations and connections to Colombian drug cartels and American criminal groups have been recognised. Some units of Yakuza have also been involved in trafficking in drugs and guns. In addition, Yakuza has moved into gambling, fraud and money laundering. It has been found out, as typical for organised crime, that some units and elements have registered themselves as companies in order to cover up their illegal activities. Thus, Yakuza as one of the biggest and oldest criminal structure has become an extremely hierarchic organisation.

109. Furthermore, there are some indicators that Pakistanis, having been squeezed out of drug trafficking business by the Turks, have switched to smuggling of and trafficking in persons business. In Italy, a number of murders related to organised crime is committed by (Kosovo) Albanians. Thus, organised crime groups are becoming more and more violent in the fight for market opportunities and often function in a very flexible manner, adapting themselves to changing circumstances and always looking for new opportunities.

110. Also Russian and Ukrainian transnational organised criminality is becoming more and more involved in trafficking in women for sexual exploitation. An NGO called Global Survival Network found that even if the biggest criminal organisations were not involved in the business directly, they provided a sort of roof, “krisha”, or security and protection for the activity. Russian organised crime has been active also in extortion, money laundering, trafficking in weapons and drugs and stolen cars. According to the report by Bundesnachrichtendienst, also the Russian organised criminal groups are very hierarchic structured and have close connections to high officials in Administration. Furthermore, several different Russian organised crime groups have connections to other transnational organised criminal structures operating in, *inter alia*, Thailand, Columbia, Hong Kong, United States, as well as the European countries France, Holland and, in particular, Austria and Germany. Also Great Britain and Luxembourg have been affected.

111. The organised crime is wide spread also in EU countries. Also domestic organised crime groups are involved in trafficking in and smuggling of persons. Italian organised crime has long roots and is involved in a variety of illicit activities, such as drug and gun trafficking, gambling and extortion. Italy being a transit country for illegal migration, Italian organised crime groups have also expanded to at least smuggling of persons. It has also established links with other criminal organisation and, according to the report by Bundesnachrichtendienst, is planning to expand further to Eastern European countries.

112. Also in Greece, the authorities suspect that some Kurds smuggled into the country are then kidnapped by the very same perpetrators to collect ransom money. Moreover, it is believed that some smugglers are forced to pay other criminal groups up to half of their illegal profits. Thus, “co-operation” among different organised crime groups in the field of smuggling of and trafficking in persons has become necessary at least in some regions and different organised crime groups are fighting for the same market opportunities. In the Nordic countries, in particular Denmark, motor cycle gangs are associated with drug trafficking, car thefts and smuggling of persons. There are also many other examples.

113. Thus, irregular migration flows have facilitated the internationalisation of organised crime within the EU. New market opportunities in trafficking in and smuggling of persons business have contributed to the fact that, there is a growing number of criminal groups involved in the business and these groups operate very internationally. Furthermore, in almost all the cases, even if the organised criminal groups have their management in some other country, at least some EU-citizens are involved in the operations. Thus, the problem of irregular migration is also a problem of organised crime. By concentrating only on irregular migration, no sustainable results may be reached. By concentrating on organised criminality, people behind these operations, i.e. facilitators of these irregular migration flows can be stopped and, as a consequence, also migration flows better regulated. In the following, some recommendations will be made.

IV. RECOMMENDATIONS ON FURTHER ACTION

114. The issues of trafficking in and smuggling of persons are very complex ones and have been dealt with at different fora also before. In the context of the work on this study, it has been discussed how to proceed the fight against, in particular, organised crime involvement in trafficking in and smuggling of persons business. There is general agreement that since the number and quality of already existing international recommendations is high, there is no need to come up with extensive new texts but, instead, within the framework of the Budapest process, concentrate on the implementation of the already existing ones, such as:

- Conference of Ministers on the Prevention of Illegal Migration held in the Context of the Budapest Process in Prague on 14-15 October 1997;
- The Hague Ministerial Declaration on European Guidelines for Effective Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation of April 1997;
- Naples Political Declaration and Global Action Plan against Organised Transnational Crime, adopted by the UN Member States at the World Ministerial Conference on Organised Transnational Crime held in Naples in 1994.

115. The working group meetings held in Vienna in October 1998 and in Bratislava in March 1999 on the relationship between organised crime and trafficking in aliens recommended that:

- the participating States, which have not yet done so, accede and implement the recommendations made in the above mentioned documents;
- bilateral multilateral co-operation should be further reinforced in the field of tackling the phenomena of trafficking in and smuggling of persons within the framework of Budapest process;
- bilateral and multilateral exchange of experience and information at operational level with regard to trafficking in and smuggling of persons should be further reinforced; and

- a further involvement of the relevant crime prevention fora at the UN, Interpol, Council of Europe, EU/Europol level should be ensured as regards the fight against trafficking in and smuggling of persons. The Budapest Group may offer further possibilities for inter-agency consultation and co-ordination.

116. As emerges from the overview presented above, the relationship between organised crime and trafficking in and smuggling of persons is already strong and growing. As a consequence, the phenomenon of trafficking in and smuggling of persons has become an important political issue on national, regional and international level. Political, social and economic policies are also of great importance in the fight against organised crime involvement in trafficking in and smuggling of persons business. Furthermore, only by equalising the law enforcement risk in different countries can organised crime be prevented from using loopholes and safe heavens for their criminal activities.

117. As the criminal organisations internationalise, so should the law enforcement efforts. International co-operation and harmonisation is the only way of reaching some sustainable results. This is why effort taken by governments and organisations, such as Europol, Interpol, IOM, ICMPD, United Nations' Centre for International Crime Prevention (CICP) and United Nations' High Commissioner for Refugees (UNHCR) should be formed into a joint action by the international machinery. The Budapest process can offer a forum for this co-operation.

Annex: Relevant international instruments

1904	International agreement for the Suppression of the White Slave Traffic
1910	International Convention for the Suppression of the White Slave Traffic
1921	International Convention for the Suppression of the Traffic in Women & Children
1926	Slavery Convention
1930	ILO Convention No. 29 concerning Forced Labour
1933	International Convention for the Suppression of the Traffic in Women of Full Age

- 1947 Protocol to amend the Convention for the Suppression of the Traffic in Women & Children and the Convention for the Suppression of the Traffic in Women of Full Age (a/m conventions No. 3 and 6)
- 1949 Protocol amending the International Agreement for the Suppression of the White Slave Traffic and the International Convention for the Suppression of the White Slave Trade (a/m conventions No. 1 and No. 2)
- 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- 1950 Final Protocol to the Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others
- 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
- 1951 Protocol amending the Slavery Convention of 1926
- 1951 The Convention relating to the Status of Refugees (the Geneva Convention)
- 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practises Similar to Slavery
- 1957 European Convention on Extradition
- 1966 The International Covenant on Civil and Political Rights (ICCPR)
- 1967 Protocol relating to the Status of refugees (Protocol to the Geneva Convention)
- 1972 European Convention on the Transfer of Proceedings in Criminal Matters
- 1977 Additional Protocol to the Geneva Convention relating to the Protection of Victims of Non-International Armed Conflicts
- 1979 Convention on the Elimination of All Forms of Discrimination against Women
- 1981 European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
- 1989 Convention on the Rights of the Child
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
- 1990 European Convention on the Implementation of the Schengen Agreement

- 1994 Problems and dangers posed by organised transnational crime in the various regions of the world, World ministerial conference on organised transnational crime, Naples, 21-23 November 1994, UN doc. E/CONF.88.2.
- 1994 Measures to combat alien-smuggling, report of the secretary-general, UN doc. A/49/350
- 1994 Measures to combat alien-smuggling, report of the secretary-general, UN doc. A/49/350/Add.1.
- 1995 Additional Information on measures to combat alien-smuggling, Commission on Crime Prevention and Criminal Justice, UN doc. E/CN.15/1995/3.
- 1995 World Situation with regard to international traffic in minors, Commission on Crime Prevention and Criminal Justice, UN doc. E/CN.15/1995/4.
- 1995 EUROPOL Convention
- 1996 Implementation of the Naples Political Declaration and Global Action Plan against Organised Transnational Crime, report of the secretary-general, UN doc. E/CN.15/1996/2.
- 1997 International Co-operation in combating transnational crime, smuggling of illegal migrants, report of the Secretary General, UN doc. E/CN.15/1997/8/Add.1.
- 1998 International co-operation in combating transnational crime, Implementation of the Naples Political Declaration and Global Action Plan against Organised Transnational Crime: Question of the Elaboration of an International Convention against Organised Transnational Crime, and other possible International Instruments, report of the meeting of the inter-sessional open-ended intergovernmental group of experts on the elaboration of a preliminary draft of a possible comprehensive international convention against organised transnational crime, Warsaw, 2-6 February 1998, UN doc. E/CN.15/1998/5.
- 1998 International co-operation in combating transnational crime, Action against illegal trafficking in migrants, including by sea, Addendum to draft international convention against the smuggling of illegal migrants and the draft protocol aiming at combating the trafficking and transport of migrants by sea, UN doc. E/CN.15/1998/5/Add.1.

- 1998 International co-operation in combating transnational crime, Mutual assistance and international co-operation in criminal matters, Commission on Crime Prevention and Criminal Justice, UN doc. E/CN.15/1998/7.
- 1998 Strategies for crime prevention and control, particularly in urban areas and in the context of public security, measures to prevent trafficking in children, UN doc. E/CN.15/1998/12.