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Organised crime and migrants

Report¹

Committee on Migration, Refugees and Displaced Persons

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A. Draft Resolution²

1. Irregular migration to Europe is facilitated and even promoted by the activities of networks of migrant smugglers. The numbers of migrants arriving in Europe as a result of these activities has increased dramatically in recent years. Organised criminal groups are now believed to make more money from smuggling migrants than from more traditional contraband such as arms or drugs, and tens of thousands of smugglers are believed to be involved in bringing migrants into Europe, forming more-or-less loose networks with connections across the continent and beyond to countries of origin and transit.

2. Furthermore, a wide range of ancillary illegal activities is connected to migrant smuggling, including document fraud, corruption of officials to obtain documents, lorry drivers' failure to declare concealed passengers when crossing borders, and corruption of border- and coast-guards. Migrant smuggling groups may also relatedly engage in trafficking of human beings, drug trafficking and money-laundering. They and other organised crime groups are also involved in, for example, labour exploitation of irregular migrants and corruption associated with national asylum systems.

3. Despite the various international instruments and mechanisms and the efforts of national authorities, when compared with the scale of migrant smuggling into Europe in recent years, it is striking how difficult it has proved to prosecute and convict migrant smugglers. Cooperation between European police forces is already taking place, and coordinated efforts to dismantle international smuggling networks have met with some success, at least as regards their European elements. This means, however, that only one 'end' of the smuggling pipelines is being disrupted, and, given their nature, not in a way that could definitively close them or even necessarily cause serious, long-standing damage.

4. The Assembly concludes that international co-operation and intelligence sharing, bringing the widest range of expertise and resources to bear, with a view to developing innovative, holistic responses, is essential if the activities of organised criminal groups in relation to migration are to be combated effectively. These responses should target all potentially vulnerable aspects of these group's business models, including money laundering, corruption of public officials and abuse of the internet. The aim must be to use all possible means to transform migrant smuggling, and the various offences often associated with it, from low risk, high return to high risk, low return activities.

5. The Assembly therefore welcomes and encourages the ongoing efforts and initiatives to this end of bodies such as the Council of Europe Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism (MONEYVAL) and the Financial Action Task Force (FATF), the Council of Europe's Group of States against Corruption (GRECO), the UN Office on Drugs and Crime (UNODC), Europol and Interpol.

6. In particular, the Assembly welcomes and encourages the initiative by the European Committee on Crime Problems (CDPC) to analyse legal shortcomings presently inhibiting prosecution of migrant smugglers, with a possible view to drafting a new regional instrument, reinforcing those of the UN, intended to enhance practical co-operation amongst member States of the Council of Europe and States in neighbouring regions. It looks forward to a prompt and constructive conclusion to this work.

7. The Assembly considers that efforts to combat migrant smuggling should also address the root causes of forced migration that drive migrants into the hands of migrant smugglers. Adequate and effective resettlement programmes for refugees and safe and legal channels for migration should also be introduced in order to reduce recourse to migrant smugglers.

8. The Assembly recommends that member States:

8.1 Ratify where necessary and fully implement the UN Convention against Transnational Organised Crime and its Protocol against the Smuggling of Migrants by Land, Sea and Air;

² Draft resolution adopted unanimously by the Committee on 15 December 2015.

8.2 Ratify where necessary and fully implement the Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism;

8.3 Fully implement the specific recommendations of MONEYVAL and the FATF relevant to money laundering associated with migrant smuggling and trafficking in human beings;

8.4 Ratify where necessary and fully implement the Council of Europe Criminal Law Convention on Corruption;

8.5 As appropriate, take a pro-active approach to co-operation with other States' relevant domestic authorities and with international bodies responsible for co-ordinating and supporting international co-operation, notably the UNODC, Europol and Interpol.

8.6 Develop and effectively apply a full range of investigative and prosecutorial techniques against migrant smugglers, including notably the following measures:

8.6.1 More effective engagement with intelligence- and information-sharing systems involving both other Member States and international agencies;

8.6.2 Better exploitation of existing information sharing platforms (e.g. FRONTEX, EUROSUR) to collect evidence on smuggling trends, modus operandi, routes and business models;

8.6.3 Better cooperation with third countries on collection of evidence and facilitation of extradition;

8.6.4 Ensuring that the competent authorities are entitled to seize, confiscate and forensically examine instrumentalities used in smuggling offences;

8.6.5 Providing protection and assistance to migrants who cooperate with the authorities in judicial proceedings, including by granting temporary residence permits;

8.6.6 Extensive use of interception of communications, including international, in accordance with the safeguards set out in the European Convention on Human Rights, as interpreted by the European Court of Human Rights in its case-law;

8.6.7 Establishing jurisdiction for offences occurring in the course of smuggling of migrants onto national territory, even when ostensibly committed outside it.

9. With a view to harmonising legal standards and facilitating international co-operation, the Assembly also encourages non-member States, in particular the principal countries of origin and transit for smuggled migrants, to ratify and implement relevant international instruments as mentioned in paragraph 8, including those of the Council of Europe that are open to them.

10. Finally, the Assembly encourages the European Union and its member States to implement fully the Action Plan against migrant smuggling (2015-2020), and to pursue EUNAVFOR MED 'Operation Sophia' with full respect for the provisions of UN Security Council Resolution 2240 (2015), in particular by ensuring that all migrants directly affected are treated with humanity and dignity and their rights fully respected, in accordance with obligations under international law, including international human rights and international refugee law.

B. Explanatory memorandum, by Mr Chikovani, Rapporteur

1. Introduction

1. Irregular migration to Europe is facilitated and even promoted by the activities of a network of migrant smugglers. The numbers of migrants arriving in Europe as a result of these activities has increased dramatically in recent years. For the EU, Frontex reports over 500,000 “illegal border-crossings” between January and August 2015, as compared to 280,000 in all of 2014, 107,000 in 2013 and 72,000 in 2012. One can safely assume that the great majority of these have had recourse to migrant smugglers during their journeys. Organised crime groups are now believed to make more money – in the billions of Euros – from smuggling migrants than from more traditional contraband such as arms or drugs, and tens of thousands of smugglers are believed to be involved in the EU alone, forming more-or-less loose networks with connections across the continent and beyond to countries of origin and transit.

2. The present report, in accordance with the original motion, is intended to examine the involvement of organised crime in migrant smuggling and exploitation and the means to fight against it, and consider how to strengthen co-operation between judicial and police services and information exchange among member States.

3. Recognition of the need for international efforts to combat the role played by organised crime in migrant smuggling is reflected in the United Nations’ adoption of a specific protocol to its Convention against Transnational Organised Crime, namely the Protocol against the Smuggling of Migrants by Land, Sea and Air. These instruments are promoted by the UN Office on Drugs and Crime (UNODC); Interpol is also involved in combatting migrant smuggling. At a European level, a range of European Union (EU) agencies are active, notably Europol, the European Commission and the High Representative for Foreign Affairs and Security Policy, the latter being responsible for the EU NAVFOR MED naval operation against migrant smugglers in the Mediterranean. Within the Council of Europe, the European Committee on Crime Problems (CDPC) is expected to undertake an urgent analysis of the legal shortcomings presently inhibiting prosecution of migrant smugglers, with a possible view to drafting a new regional instrument reinforcing those of the UN, intended to enhance practical co-operation amongst member States of the Council of Europe and States in neighbouring regions.

4. Nevertheless, despite the various international instruments and mechanisms and the efforts of national authorities, when compared with the scale of migrant smuggling into Europe in recent years, it is striking how difficult it has proved to prosecute and convict migrant smugglers. That said, there have been significant successes, notably in Italy, and additional resources are being made available and new initiatives taken at both national and European levels.

5. Smuggling is not the only way in which organised crime groups seek to profit from irregular migrants. Experience in Italy and elsewhere shows that organised crime groups are also involved in, for example, labour exploitation of irregular migrants and corruption associated with national asylum systems. There have also been reports of smuggled migrants being used as carriers for illegal drugs.

6. The present report will not address the question of trafficking in human beings, which falls within the mandate of the Committee on equality and non-discrimination. (Migrant smuggling and human trafficking are distinct on four main grounds: migrant smuggling is voluntary and consensual, whereas human trafficking involves coercion or deception; smuggling ends when the migrant reaches their destination, whereas victims of trafficking continue to be exploited after arrival; profits in smuggling derive from migrants’ payment for transport, whereas those in trafficking derive from exploitation of the victims; and migrant smuggling is always transnational, whereas trafficking need not be. This does not mean that migrants may not be exposed to abuse by smugglers during their journeys, or that they may not find themselves subject to exploitation at their destinations.)

7. During preparation of the report, the Rapporteur visited Rome (Italy), where he met representatives of the UNHCR, IOM, Italian Ministry of the Interior, UN Interregional Crime and Justice Research Institute, Italian parliamentary Anti-mafia Commission and Italian Anti-corruption Authority; and the Committee held a hearing with the participation of representatives of the European Union, the UN Office on Drugs and Crime, Europol and the Council of Europe’s Information Society and Action against Crime Directorate. The Rapporteur would take this opportunity to thank all those involved for their invaluable contributions.

2. Activities of organised criminal groups relating to migration

8. The main area of activity concerning migration in which organised crime groups are involved is smuggling of migrants. Migrants are smuggled to Europe from around the world, notably South-east Asia, South Asia, Central Asia (especially Afghanistan, and Afghan refugees from neighbouring countries such as Pakistan), the Middle East (especially Syria and Iraq, and refugees leaving neighbouring countries such as Lebanon and Jordan), the Horn of Africa (especially Eritrea and Somalia) and West Africa (especially Nigeria and Mali). With visa requirements and carrier liability laws increasingly the norm, air transport has become increasingly difficult as a means of irregular migration; instead, most smuggled migrants travel by land and/ or sea. Even migrants from South and East Asia have been smuggled into Europe across the Mediterranean, having first flown to West or North Africa, although their numbers have fallen in recent years.

9. From West Africa, the main possible routes are either: to the Canary Islands; through Mali to Algeria, Morocco and then Ceuta or Melilla; through Niger to Libya and then Italy; and through Niger or directly to Chad, Sudan, Egypt and then Greece, either by sea or via Turkey. (Nationals of member States of the Economic Community of West African States enjoy freedom of movement between them.) From Syria, Iraq and neighbouring countries, the main routes are either: west through Egypt, to reach Europe either directly to Greece or via Libya to Italy; south as far as Sudan, before returning north through Libya and then to Italy; and north through Turkey to Greece.

10. A key distinction is between 'pay-as-you-go' journeys consisting of separate stages, arranged one after the other by the migrant, sometimes with long intervals during which money is earned to pay off debts or meet future expenses; and 'full package' journeys prepared in advance by a single smuggler, coordinating the activities of others, and often not paid for in full until completion, from money deposited with a trusted third-party. Cost may also depend on the 'quality of service', for example the degree of overcrowding on a boat or having a place on deck as opposed to in the hold: in both instances, the key consideration is in reality the relative danger involved. The different prices charged to migrants of different nationalities – on the Central Mediterranean route, for example, West Africans are reported to pay less than Syrians – often reflect this, as well as their relative financial resources. Some migrants may travel for free during parts of a journey in return for performing certain functions, for example acting as pilot of a boat.

11. Although not the approach taken by the great majority of smuggled migrants, a considerable number overcome administrative barriers such as visa requirements by use of corruptly acquired, altered or forged documents – a form of 'full package'. The cost of such documents and of airline tickets puts this approach beyond the financial reach of most migrants. Those using this approach may be accompanied on their journeys or met upon arrival by accomplices of the smugglers, who retrieve valuable and potentially incriminating documents after arrival.

12. A wide range of ancillary illegal activities is connected to migrant smuggling, including document forging, corruption of local or consulate officials to obtain documents, lorry drivers' failure to declare concealed passengers when crossing borders, and corruption of border- and coast-guards. Smugglers may also commit offences in the way they treat migrants, for instance forced labour in order to discharge debts, unlawful detention prior to embarkation, and rape or other sexual and physical assaults; or in connection with the dangerous, unseaworthy conditions of the vessels in which migrants are abandoned at sea. Several smugglers arrested after being rescued from their sinking vessels have been charged with homicide-related offences in connection with the deaths of migrant passengers. Smuggled migrants may be induced to carry illegal drugs, which are increasingly smuggled into West Africa from South America. Organised crime groups involved in migrant smuggling may also be involved in trafficking of human beings. Money-laundering offences may be committed in connection with the revenues generated by migrant smuggling.

13. The involvement of organised crime does not end upon arrival in Europe. In addition to arranging further irregular movement from the country of first arrival to the intended destination, it may take other forms. The "*mafia capitale*" scandal in Rome involves, amongst other things, corruption of public authorities by organised crime groups in the award of contracts for constructing and administering refugee reception centres. Active members of a migrant smuggling network have been arrested from amongst the residents of one such centre at Mineo in Sicily, where migrants, trapped by extremely lengthy asylum procedures, are exploited by local agricultural businesses and criminals. Exploitation of irregular migrant workers is widespread in Southern Italy, sometimes under the abusive *caporalato* system of intermediaries, and may involve local organised crime groups. Italy is not, of course the only country affected: for example, the 2004 'Morecombe Bay cockling disaster' in the United Kingdom involved the deaths by drowning of 21 Chinese illegal migrant labourers, unlawfully employed by a local firm, who had been smuggled into Liverpool docks by Chinese organised crime

groups. These examples also illustrate the co-operation between those smuggling migrants to Europe and those involved with them within Europe thereafter.

3. Structure and organisation of migrant smuggling groups

14. The UN Convention against Transnational Organised Crime defines an 'organised criminal group' as "a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit".³ The Protocol against the Smuggling of Migrants by Land, Sea and Air establishes three offences: the smuggling of migrants; producing or procuring, providing or possessing a fraudulent travel or identity document for the purpose of enabling migrant smuggling; and enabling illegal over-staying through document fraud or 'any other illegal means'.⁴ The Protocol also provides that these offences shall be considered as established in accordance with the UN Convention. As regards migrant smuggling, therefore, criminal activity will fall within the scope of the UN Convention provided it is committed by a structured group of three or more persons, existing for a period of time and acting in concert.

15. Whilst a common public perception of organised crime groups is of extensive, structured, centralised mafia-type organisations, those involved in migrant smuggling are generally much smaller in scale and more diffuse in nature. This does not mean, however, that there are not continuous chains of activity leading from countries of origin through transit countries to destination countries. Rather than being 'administered' by a single, over-arching 'authority', however, more often there is ad hoc co-operation between otherwise separate groups. Many smugglers have definite business models and practices, even, for example, advertising their destinations and prices on social media such as Facebook and making efforts to maintain a good reputation for their 'services'. Recent investigations, notably by anti-mafia prosecutors in Southern Italy, however, have revealed more ambitious, structured and permanent networks. These include that led by Ermias Ghermay, based in Libya, with an international network of associates and able to offer a wide range of migrant-smuggling services, who is suspected to have been responsible for the Lampedusa disaster of October 2013, in which some 366 migrants drowned.

16. There has been some disagreement as to the extent to which migrant smuggling on certain routes, in particular from West Africa, involves or should be categorised as organised crime. Given the persistence and growing scale of irregular migration to Europe, the sophistication of the methods employed and the cumulatively enormous sums of money now at stake, however, there would seem today to be little doubt that the definition in the UN Convention is generally satisfied. There may nevertheless be local opportunists who occasionally, for example, transport migrants in addition to their usual cargo, or who react to local circumstances such as the unexpected closure of border crossing points that force migrants to seek alternatives, as was the case in the Western Balkans this year: the activities of such individuals would probably not qualify as 'organised crime'. As one might expect, generally speaking, the longer, more complicated and more regularly frequented the route on which a particular migrant smuggling group operates, the more likely its activity is to amount to 'organised crime'.

17. In many countries of origin and transit, smugglers seem to be able to operate more or less openly, advertising their 'services' publicly, operating from fixed premises and even having high standing in the local community. They may have moved from legal activities, such as travel agency, commercial transport or fishing, to related migrant smuggling activities, or engage in both simultaneously. Some may be former migrants themselves, who have gradually built up their activities on the basis of their own experience and knowledge and the networks of contacts they have developed in the course of their travels. Smugglers may be either locals or of the same nationality as those migrants passing through a particular location: shared ethnic, religious and cultural backgrounds may facilitate contacts and trust between migrants and smugglers.

18. Certain organisational characteristics appear to be shared by groups of migrant smugglers in different countries. Even at a single location, different individuals may be responsible for specific functions such as making initial contact with migrants and liaising with those providing transport, providing accommodation, accompanying migrants to this accommodation and subsequently to the point of embarkation, and, in the case of maritime routes, transporting them to the vessels on which they are expected to complete their journeys. In the case of smugglers operating the Central

³ See Article 2, which also contains further definition of these terms.

⁴ See Article 6(1). For further definition of these terms, see Article 3 of the Protocol.

Mediterranean route, for example, the aim is also to isolate the migrants from the principal smugglers, in order to avoid their being able to identify them in future.

19. Even if often lacking large-scale organisation or over-arching structures, migrant smuggling is big business. Europol has estimated that some 30,000 people are involved in migrant smuggling groups across the EU. The Austrian authorities estimate that 200 groups are active in Greece alone, and that smugglers have spread throughout the Western Balkans and into Hungary and beyond. Frontex states that migrant smuggling and human trafficking now generate more money for organised crime groups than the illicit weapons or drugs trades.

4. Activities of international organisations involved in the fight against migrant smuggling

20. As noted above, the UNODC is guardian of the UN Convention against Transnational Organised Crime and its protocols, including that against smuggling of migrants. The UNODC's activities aim at assisting States in bringing their legislation in line with the Protocol and developing an effective criminal justice response to migrant smuggling. This includes, for example, a Model Law against the Smuggling of Migrants, training for national officials, a Toolkit to Combat Smuggling of Migrants, and publication of research and policy documents.

21. Europol provides support to major international investigations by coordinating operational activities, providing forensic and technical expertise, and access to criminal intelligence and analysis. It works to strengthen cooperation with countries of transit and origin, including under the EU enlargement process with countries in the Western Balkans and Turkey. Its activities may also involve non-law enforcement actors such as judicial authorities, customs and border authorities, NGOs, academia and the private sector. One of its objectives is to reduce information gaps by delivering strategic analyses and specialised reports. Specific activities include 'Joint Operational Team (JOT) Mare', launched in March 2015 to ensure an intensified exchange of intelligence with Frontex and close cooperation with Interpol, with seconded national experts facilitating cooperation between Europol and the services of the participating EU Member States. Europol (along with Frontex) is also involved in debriefing newly arrived migrants and refugees, in particular at the EU's 'hotspots' in Italy and Greece, with a view to obtaining intelligence on migrant smuggling operations.

22. On 27 May 2015, the European Commission published an "EU Action Plan against migrant smuggling (2015 – 2020)". This contains four chapters: enhanced police and judicial response to disrupt smugglers' business models, including the EU NAVFOR MED 'Operation Sophia' (see below) and asset seizure; improved information sharing and gathering, including by strengthening the roles of Europol, EU delegations and the Africa Frontex Intelligence Community, using the 'hotspots' proposed for reception and processing of asylum applicants as information sources, and internet monitoring; enhanced prevention of smuggling and assistance to vulnerable migrants, including public awareness campaigns for example concerning risks, working with business operators in at-risk areas such as transport and shipping, enhancing the effectiveness of returns as a deterrent, technical support to countries of origin and transit and stronger action against employment of irregular migrants; and stronger cooperation with third countries to address root causes, promote accession to the UN migrant smuggling protocol and improve capacity.

5. Successes in the fight against migrant smuggling and related organised crime activities

23. In Europe, it is perhaps not surprising that Italy, given its disproportionate exposure to irregular migration and hard-won expertise in the fight against organised crime, leads the way in the combat against migrant smuggling. Recent successes include the following:

- In December 2014, a joint operation involving Italian and German police led to the arrest of ten Eritrean suspected migrant smugglers, part of a highly active network smuggling migrants from Libya to Italy and onwards to other European countries. Amongst those arrested was the man allegedly responsible for the journey that resulted in the deaths of some 244 people off the coast of Libya in June that year. As well as Italy and Germany, the group was alleged to have cells in several other European countries.
- In April 2015, two alleged smugglers – the captain and a crewman – were arrested from amongst the survivors of a shipwreck off the coast of Libya in which some 800 or more migrants had drowned.
- During the same period, Italian police issued warrants for 24 alleged members, of various non-European nationalities, of a wider group of migrant smugglers. 15 of them were arrested in Sicily (including at the Mineo reception centre – see above), Milan and Rome, but not the two alleged ringleaders (who include Ermias Ghermay – see above), said to live in Libya.

- In August 2015, Italian police arrested five alleged migrant smugglers, again from amongst rescued survivors of a shipwreck off the Libyan coast.
- Later that month, a further ten were arrested in connection with the wreck of two boats off the Libyan coast in which at least 84 people died. The UNHCR hoped that “this incident will result in strong cooperation among European police forces, intelligence agencies and international organisations to crack down on the smuggling trade while putting in place measures to protect and care for victims”.

24. Other European countries have also achieved results in combatting smuggling, including, recently, the following:

- In February 2015, Spanish authorities, supported by Europol, arrested five alleged members of a network active in several European countries and in Pakistan, engaged in migrant smuggling, document forging and labour exploitation.
- In March 2015, Greek authorities, supported by Europol, arrested 16 suspects, of seven different nationalities, in connection with smuggling of mainly Syrian migrants by sea from Turkey, and onwards to other EU countries using forged documents. The group was suspected of having made up to €7,500,000 in profits.
- In May 2015, Spanish police arrested 13 members, including the leader of a group allegedly responsible for smuggling migrants from Afghanistan to Europe; a further 11 were arrested in the United Kingdom. Upon arrival in Spain and Italy, the migrants had been dispersed to other European countries including Germany and Sweden.
- Also in May, German police, supported by Europol, arrested three key members of a group that smuggled migrants by various routes between Africa and southern Europe; these arrests followed an earlier five, which had led to the existence of a second group becoming apparent.
- In June 2015, four men (three British, one of Kurdish origin) went on trial in the United Kingdom, charged with offences connected to a “large and organised” smuggling group.
- In late August 2015, Hungarian police arrested three Bulgarians and one Afghan in connection with the earlier discovery of the bodies of 71 presumably smuggled migrants in the back of a refrigerated lorry in Austria. They were expected to be extradited to Austria. A fifth suspect, also Bulgarian, was arrested in Bulgaria.
- In early September 2015, four Syrians were arrested in Turkey, suspected of being involved in the migrant smuggling operation that led to the death of 3-year old Syrian boy, Aylan Kurdi.
- In October 2015, the Europol-supported, Franco-Portuguese ‘Operation Bouquet’, initiated in December 2013, culminated in the arrest of 9 key members of a criminal network transporting irregular migrants within the EU.
- Between 15 and 23 September 2014, Europol acted as the coordination centre for Operation Archimedes, the largest police operation ever conducted against organised crime in Europe. Amongst other results, the operation led to 170 arrests for ‘facilitation of illegal immigration’.

25. Although only partial information, these arrests and prosecutions illustrate certain key issues in the fight against migrant smuggling. Encouragingly, they show that effective cooperation between European police forces is already taking place, and that coordinated efforts to dismantle international smuggling networks have met with success, at least as regards their European elements. On the other hand, this means that only one ‘end’ of the smuggling pipelines is being disrupted, and, given their nature, not in a way that could definitively close them or even necessarily cause serious, long-standing damage. In every case, albeit for understandable reasons, only persons physically in Europe were arrested or prosecuted. From what is known about the working methods of migrant smuggling groups, those arrested after rescue from ship-wrecks would presumably have been low-level associates and certainly not the central, leading figures, who would have remained safely in Libya; they may even have been basically migrants themselves who had agreed, for example, to pilot a boat.

26. The examples also show that organised crime groups composed of non-Europeans operate not only to smuggle migrants to Europe, but also within Europe. It is highly unlikely that such groups operate without being known to and, in one way or another, associated with local organised crime groups, especially in places such as Southern Italy where such groups are particularly powerful and territorial.

27. It should be noted that in early September, the Italian authorities, citing intercepted telephone conversations between suspected migrant smugglers, claimed that the relative switch in emphasis from the Central Mediterranean to the Eastern Mediterranean route this summer was partly due to the increasing number of arrests in Italy – over 100 between June and August in Italy alone. If true, this again shows the flexibility and responsiveness of migrant smugglers in the face of efforts to halt their activities. (This can be seen alongside Frontex’s view of the possible displacement effect of EU NAVFOR MED operations.)

28. Efforts to prevent migrant smuggling based primarily on strict border control may have local effects but do not necessarily address the broader phenomenon. Irregular migration from West Africa to the Spanish Canary Islands (the 'Western African route'), for example, has greatly reduced in recent years because of enhanced co-operation with and co-ordination of the activities of national authorities in the region. On the other hand, despite the efforts of the Moroccan authorities and the erection of a high-security fence and maritime surveillance systems around Spain's North African enclaves of Ceuta and Melilla, irregular migration increased dramatically in 2011 and, following a decrease in 2012, rose again in 2013 and 2014. Migrants from the West African countries of origin most represented along these routes are also being smuggled in huge numbers along the Central Mediterranean route, which saw an increase of over 970% between 2012 and 2014. This again underlines the flexibility of migrant smuggling networks and the desperation and determination of the migrants, willing to risk ever more dangerous journeys even across deserts and seas. Furthermore, the longer, more difficult and/ or complicated the journey a migrant faces, the greater the likelihood that he or she will be forced to have recourse to migrant smugglers. Other things being equal, border control is likely to have a proportionately greater 'positive' effect on levels of recourse to migrant smugglers than a 'negative' effect on irregular migration. In this respect, resettlement programmes for refugees in over-burdened countries of first asylum and safe and legal channels for regular migration can offer alternatives to irregular migration facilitated by migrant smugglers, reducing demand and thereby the potential revenues available to organised criminal groups.

6. Additional approaches to combatting organised crime related to migration

6.1. EUNAVFOR MED 'Operation Sophia'

29. The EU's EUNAVFOR MED 'Operation Sophia' was established to disrupt the business model of migrant smuggling networks in the Mediterranean, in the first place those operating from Libya, and contribute to reducing the loss of life at sea. Inspired by the successful operation against pirates off the Horn of Africa, it consists of three phases: surveillance and assessment; search and, if necessary, diversion of suspicious vessels; and disposal of vessels and related assets, "preferably before use", and apprehension of smugglers. The EU Council Decision establishing the operation contains numerous references to international law, including UN conventions such as that on the law of the sea, the migrant smuggling protocol and the refugee convention. On 14 September, the EU Council decided that the phase 1 objectives and the conditions necessary to launch phase 2 were met; on 7 October, with the required assets available and rules of engagement agreed, the EU launched phase 2, involving six naval units and seven planes and helicopters, and three more vessels expected.

30. On 9 October 2015, the UN Security Council adopted Resolution 2240 (2015). Expressed in precise and restrictive terms, this Resolution *inter alia* authorises, for a period of one year, member States to (i) inspect on the high seas off the coast of Libya (not in Libyan territorial waters) vessels that they have reasonable grounds to suspect are being used for migrant smuggling or human trafficking from Libya, provided good faith efforts have been made to obtain prior consent from the vessel's flag State; (ii) seize such vessels if confirmed as being used for such purpose; and (iii) take further action, including disposal, in accordance with applicable international law and with due consideration to the interests of third parties acting in good faith. The Resolution is expressly intended not to undermine individuals' human rights or prevent them from seeking international protection; it requires that all migrants, including asylum seekers, be treated with humanity and dignity and that their rights be fully respected, with all States urged to comply with their obligations under international law, including international human rights and international refugee law.

31. Given that smugglers may not themselves leave shore, let alone territorial waters, and often use vessels they consider as disposable – in the expectation that if and when intercepted or rescued by European authorities, those vessels' passengers will be transported to European ports – it is unclear how fundamentally disruptive the operation's methods will be. The EU has recognised that military action alone cannot achieve a lasting solution and may lead to a shift in departure sites. In this respect, the Executive Director of Frontex has also commented that "If there is a military operation in the vicinity of Libya, that could change migration routes and shift them towards the eastern route. We are already seeing people from Africa arriving in Greece... We may see striking changes". Indeed, the hugely increased use in 2015 of the route from Turkey to the Greek Aegean islands for smuggling migrants of various origins is fully in line with this prediction.

6.2. Combating money laundering

32. One area in which organised crime groups may be vulnerable to investigation and prosecution is the laundering of the proceeds of their criminal activity, which often takes place through 'underground banking systems'. Indeed, this is recognised in the UN Convention, which contains provisions to criminalise and combat money laundering that, for those States that have ratified it, would extend also to the proceeds of offences under the migrant-smuggling protocol. At the European level, the Council of Europe has elaborated two conventions in this area, most recently the 2005 Council of Europe Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. Regrettably, the 2005 Convention, which is open to non-member States, has been ratified by only 26 member States (the earlier, 1990 Convention, still in force but felt to be in need of updating, has however been ratified by all 47) and no non-members.

33. The Council of Europe also conducts ongoing activities against money laundering in the form of MONEYVAL, the Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism. In 2005, MONEYVAL published a report entitled "Proceeds from trafficking in human beings and illegal migration/ human smuggling".⁵ More recently, in 2011 the international Financial Action Task Force, implementation of whose standards by certain Council of Europe member States is monitored by MONEYVAL, issued a report entitled "Money Laundering Risks Arising from Trafficking in Human Beings and Smuggling of Migrants". Between them, these reports make the following recommendations of particular relevance to combating money laundering associated with migrant smuggling:

- i. Rapid implementation of the FATF recommendations on alternative remittance and wire transfers, given the importance of money remittance services in offences of migrant smuggling, and on cash couriers.⁶
- ii. Criminalisation of 'self-laundering' (or 'own laundering', as distinct from recourse to professional launderers).
- iii. Requiring those convicted of migrant smuggling offences to demonstrate the origin of alleged proceeds or other property liable to confiscation (in effect, shifting the burden of proof).
- iv. Special attention to identification of beneficial ownership of companies (customer due diligence requirements and transparency and beneficial ownership of legal persons).⁷
- v. Ensuring good quality suspicious transaction reporting obligations, effective financial intelligence units and competent law enforcement and investigative authorities.⁸
- vi. Reinforcing international co-operation, including through international instruments, mutual legal assistance and extradition.⁹

6.3. Fighting corruption of public officials

34. Another area where efforts can be made to combat the activities of organised criminal groups relating to migration is corruption of public officials, which, as noted above, may occur in relation not only to e.g. irregular border crossing or the obtaining of travel documents, but also to activities of public authorities dealing with migrants after their arrival (e.g. the *mafia capitale* scandal in Italy). The UN Convention contains provisions to criminalise and combat corruption. At the European level, the Council of Europe has elaborated the Criminal Law Convention on Corruption, the preamble to which recognises the links between organised crime and corruption, and which is open to non-member States: 44 member States have ratified and one non-member State has acceded to this convention. The GRECO (Group of States against Corruption), an inter-governmental body specialising in the fight against corruption which monitors implementation of the convention, has not specifically addressed corruption in the context of migrant smuggling. Nevertheless, more effective implementation of the UN and Council of Europe Conventions and, potentially, targeted activities by GRECO should also contribute to combating the activities of migrant smugglers.

6.4. Countering cyber-crime/ criminal misuse of the internet

35. The use of internet-based social media by migrant smugglers to attract custom may also represent an area of vulnerability. The Rapporteur notes the existence of Europol's European Cybercrime Centre and the Council of Europe's Convention on Cybercrime. It is unclear, however, to

⁵ See doc. MONEYVAL (2005) 7.

⁶ Special Recommendations VI, VII and IX.

⁷ Recommendations 5 and 33.

⁸ FATF Recommendations 13, 26 and 27.

⁹ FATF Recommendations 36-40 and Special Recommendation V.

what extent these could be used to suppress, possibly through criminal prosecution, the use of social media as an element of criminal activity such as migrant smuggling. Nevertheless, the Rapporteur believes that this is an aspect of the migrant smuggling business model that may be susceptible to greater pressure from law enforcement bodies, and thus merit further examination.

7. Conclusions and recommendations

36. It is clear that international co-operation, through an inter-agency, multi-sectorial approach, will be essential to enhance efforts to disrupt migrant smugglers' activities. The Rapporteur believes that every effort should be made to enhance co-operation between the various European and international bodies, bringing the widest range of expertise and resources to bear, with a view to developing innovative, holistic responses to migrant smuggling and related criminal activities.

37. As regards the efforts of national authorities, these should be based on harmonisation of legal standards and reinforcement of mechanisms to ensure effective information sharing and practical co-operation. To this end, all Council of Europe member States, as well as those non-member States that are the principle countries of origin and transit for smuggled migrants, should ratify and effectively implement relevant legal instruments such as the UN Convention and Protocol and the above-mentioned Council of Europe conventions on money laundering and corruption, and should engage fully with the relevant co-operation and monitoring bodies.

38. The aim must be to use all possible means to transform migrant smuggling, and the various offences often associated with it, from low risk, high return to high risk, low return activities.