



# The new 'public enemy number one'

Comparing and contrasting the war on drugs and the emerging war on migrant smugglers

## Main report

MMC Research Report, February 2019



**Front cover photo credit (upper image):**

JB Russell / Panos. El Chapare, BOLIVIA (1996)

UMOPAR (anti-narcotics police) on an aerial patrol. El Chapare, in Bolivia's central lowlands, is the country's principal coca producing region and at the heart of the war on drugs.

**Front cover photo credit (lower image):**

Carlos Spottorno / Panos. Between Sicily and Libya, Mediterranean Sea (2017)

In a final act, after rescuing its occupants, Spanish marines set fire to the flimsy craft that was carrying the migrants across the Mediterranean Sea. It is not clear if destruction of vessels has any impact on the migrant smuggling trade.

# Acknowledgements

**Researched and written by:** Christopher Horwood

**Additional research and editing:** Anthony Morland

**Coordination:** Christopher Horwood

**Reviewed by:** Roberto Forin and Bram Frouws

**Layout and design:** Simon Pegler

**Suggested citation:** Horwood, C. (2019) The new 'public enemy number one'- comparing and contrasting the war on drugs and the emerging war on migrant smugglers. Mixed Migration Centre. Available at: <http://www.mixedmigration.org/>

The Mixed Migration Centre (MMC) is a global network consisting of six regional hubs (Asia, East Africa, Europe, Middle East, North Africa & West Africa) and a central unit in Geneva. The MMC is a leading source for independent and high-quality data, research, analysis and expertise on mixed migration. The MMC aims to increase understanding of mixed migration, to positively impact global and regional migration policies, to inform evidence-based protection responses for people on the move and to stimulate forward thinking in public and policy debates on mixed migration. The MMC's overarching focus is on human rights and protection for all people on the move.

The MMC is part of, and governed by the Danish Refugee Council (DRC). While its institutional link to DRC ensures MMC's work is grounded in operational reality, it acts as an independent source of data, research, analysis and policy development on mixed migration for policy makers, practitioners, journalists, and the broader humanitarian sector. The position of the MMC does not necessarily reflect the position of DRC.

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**Photo credit:** Teun Voeten / Panos.  
Mexico City, MEXICO (2009)

A mural depicts the war on drugs in a museum at the headquarters of the Mexican Army. The museum is not open to the public but instead acts as an educational tool for the army and its soldiers. In the last decade the drugs war in Mexico has been stepped up as drug-related deaths and the power of drug traffickers and cartels has intensified.



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# List of acronyms

<b>4Mi</b>	Mixed Migration Monitoring Mechanism initiative (under MMC)
<b>CEAS</b>	Common European Asylum System (EU)
<b>CSDP</b>	Common Security and Defence Policy (EU)
<b>DEA</b>	Drug Enforcement Administration
<b>DTOs</b>	Drug trafficking organizations
<b>ESMC</b>	European Migrant Smuggling Centre
<b>EUCAP Sahel</b>	EU Capacity Building Mission in Sahel
<b>EUNAVFOR Med</b>	European Union Naval Force Mediterranean
<b>FARC</b>	The Revolutionary Armed Forces of Colombia
<b>Frontex</b>	The European Border and Coast Guard Agency
<b>GCM</b>	Global Compact for Safe, Orderly and Regular Migration
<b>GI</b>	Global Initiative against Transnational Organised Crime
<b>GNA</b>	Government of National Accord (Libya)
<b>ICE</b>	U.S. Immigration and Customs Enforcement
<b>IDPC</b>	International Drug Policy Consortium
<b>IOM</b>	International Organisation for Migration
<b>LSE</b>	London School of Economics
<b>MMC</b>	Mixed Migration Centre
<b>OECD</b>	Organisation of Economic Cooperation and Development
<b>UNGASS</b>	United Nation General Assembly Special Session
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UNSC</b>	United Nations Security Council
<b>UNTOC</b>	United Nations Convention against Transnational Organized Crime

# Introduction

Just as the world's governments have, for some decades, waged war on international drug trafficking, there are increasing signals that global authorities have embarked on a major offensive against the growing phenomenon of migrant smuggling in addition to their existing fight against human trafficking.<sup>1</sup>

One of the most unambiguous of these signals came in April 2015, when Dimitris Avramopoulos, the European Union's top official for migration,<sup>2</sup> told a news conference: "we will take action now. Europe is declaring war on [migrant] smugglers. Europe is united in this effort. We will do this together with our partners outside Europe. We will work together because smuggling is not a European problem — it is a global one."<sup>3</sup>

Largely because of its clandestine nature, there is insufficient data available to gauge the global extent of migrant smuggling. Still, existing research offers some hints: according to one recent estimate, some 2.5 million migrants across the world used smugglers in 2016, generating an economic return of at least \$5.5 billion dollars.<sup>4</sup> 'Since the migration crisis in 2015 the migrant smuggling business has established itself as a large, lucrative and sophisticated criminal market.'<sup>5</sup>

This paper, like others before it, argues that the main motivation behind the new offensive against migrant smugglers is not only the much-vaunted concern for the safety and protection of migrants and refugees<sup>6</sup> (Avramopoulos prefaced his declaration with the words 'one more life lost [at sea] is one too many') but also the fact that migrant smugglers are the main vector and means for irregular migration. Rightly or wrongly, irregular migration is portrayed, even if disingenuously, by governments and many electorates as undesirable from a socio-political, security and economic perspective, and as a potential cause of future social unrest and political disruption.

As evidenced by numerous recent elections – such as the US congressional midterms, the Italian general election and Hungarian parliamentary polls in 2018, and the UK Brexit referendum in 2016 – migration is top of the political agenda in many countries of the global North, especially OECD countries, as well as in several countries in Asia and Latin America and in South Africa.

There are those who seek to apply the experience of the war on drugs to the emerging war on migrant smugglers to warn that such a confrontation carries high costs, low chances of success and would likely lead to an escalation of violence against the migrants themselves.<sup>7</sup> Such arguments suggest we should learn from the war on drugs' failures, and design different policy and criminal justice responses to irregular migration and human smugglers so as not to repeat past and ongoing failures.

This research report examines this hypothesis; that the war on drugs is analogous to the war on migrant smuggling and that the lessons derived from the war on drugs are applicable to current policy makers around migration. Using a compare-and-contrast analysis it looks at the intrinsic aspects of the commodities themselves (substances vs migrants), the dynamics and modalities of the respective illicit economies, the lessons learnt from the war on drugs, the policy environment and implications of using alternative approaches, namely 'legalising' drugs and/or new approaches, inter alia, towards decriminalizing irregular migration.

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1 Migrant smuggling and human trafficking, despite being legally distinct activities are often conflated and linked in policy. A key criterion of smuggling, for example, is a migrant's consent, at least at the outset of his/her journey. For a succinct summary of the distinctions see: US Department of State (2017) *Human Trafficking & Migrant Smuggling: Understanding the Difference*. <https://www.state.gov/j/tip/rls/fs/2017/272005.htm>. See also: Human Rights Watch (2015) *Smuggling and Trafficking Human Beings - Questions and Answers*. <https://www.hrw.org/news/2015/07/07/smuggling-and-trafficking-human-beings>

2 Avramopoulos is the European commissioner for migration, home affairs and citizenship.

3 Quoted in: Donaldson, M. & Surana, K. (2015) *EU plan to target Libyan smugglers too little, too late, experts say*. Al Jazeera America <http://america.aljazeera.com/articles/2015/5/3/eu-plan-to-target-libyan-smugglers-too-little-too-late.html>

4 UNODC (2018a) *Global Study on Smuggling of Migrants 2018*. [https://www.unodc.org/documents/data-and-analysis/glosom/GLO-SOM\\_2018\\_web\\_small.pdf](https://www.unodc.org/documents/data-and-analysis/glosom/GLO-SOM_2018_web_small.pdf)

5 Europol (2018) *Two years of EMSC – Activity report Jan. 2017-Jan. 2018*. <https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment-2017>

6 For ease of reading and to avoid repetition, throughout this paper the term migrants refers to people on the move in mixed flows, including refugees, asylum seekers and other migrants (often economic) who characterize the modern phenomenon of mixed migration.

7 Tinti, P. & Reitano, T. (2016) *Migrant, Refugee, Smuggler, Saviour*. Hurst Publishers (London)

# Section 1: Setting the scene

## The war on drugs: a brief history

Following the criminalisation of certain psychoactive substances, predominantly consumed for non-medical use, an escalating global combat against drugs has been fought on both the demand and the supply fronts. While the criminalization began just over a century ago, what has been widely billed as the ‘war on drugs’ – a war implicitly declared in 1971 when president Richard Nixon described drug abuse in the United States as ‘public enemy number one’<sup>1</sup> – has been raging (behind the scenes for most people, but for the less fortunate very much in their midst) for at least five decades.

The production, transfer, trade, possession, distribution and use of approximately 450 named substances<sup>2</sup> is prohibited and subject to long-standing national and international legislation.<sup>3</sup> Hundreds of law enforcement agencies with tens of thousands of staff globally spend large amounts of resources costing billions of dollars annually to intercept and interdict drugs, their producers, trafficking networks and users. Numerous dedicated security and police units are permanently engaged in levels of militarised operations against drug traffickers, not dissimilar to civil conflict. Where foreign forces and finance combine with national efforts to fight traffickers the operations resemble an international asymmetrical battlefield, employing the full armoury of latest modern weaponry (on land, air and sea), and producing high numbers of casualties among both civilian populations and heavily-armed ‘combatants’ serving in the ‘armies’ of various drug lords.

### Political complexity

In some places, such as Afghanistan, and, until FARC rebels entered into a peace process in late 2016, Colombia, anti-government insurgency and ideologically-based terrorism combines with trafficking, adding a politicised complexity to law enforcement operations. Meanwhile, the highly lucrative economy around the trade has led to entrenched corruption, frustrating effective action to

urtail the growing black economy.

As one recent history of this ‘war on drugs’ notes, the first landmark legislation against specific narcotic substances was introduced in the US just as World War One began. While that conflict lasted just four years, the war on drugs is still raging to this day. It is a war with scant evidence of success as the world’s illicit drugs trade and consumer appetite and demand continues to increase in scale and scope.<sup>4</sup>

“Both the range of drugs and drug markets are expanding and diversifying as never before (...) We are facing a potential supply-driven expansion of drug markets, with production of opium and manufacture of cocaine at the highest levels ever recorded.”<sup>5</sup>

### Booming business

According to data published in 2013 by the United Nations Office on Drugs and Crime (UNODC) and the EU’s law-enforcement agency, Europol, the annual global drugs trade is worth around \$435 billion a year, with the annual cocaine trade worth \$84 billion alone.<sup>6</sup> In 2017, a report by Global Finance Integrity, a US-based nonprofit research organisation, estimated the value of the global trafficking market of cannabis (excluding synthetic cannabinoids), cocaine, opiates and amphetamine-type stimulants at between \$426 billion and \$652 billion.<sup>7</sup> Recent national estimates indicate that consumption of banned substances, be it by only occasional or more regular users, has risen; in many countries access to recreational illicit substances is now ubiquitous. In Europe the 2016 drugs market was reported to be ‘resilient’ and conservatively estimated to be worth €24.3 billion in 2013, with new stimulants, cannabis and heroine

1 At the same news conference Nixon announced major funding for ‘a new all-out offensive’ See video at: <https://www.youtube.com/watch?v=y8TGLLQID9M>

2 UNODC (2017) *World Drugs Report 2017*. <https://www.unodc.org/wdr2017/index.html>

3 Consolidating two earlier UN conventions adopted in 1961 and 1971, the UN Convention Against Illicit Trafficking of Narcotic Drugs and Psychotropic Substances of 1988 came into force in 1990. Some 190 countries are party to this key international instrument.

4 Hari, J. (2015) *Chasing the Scream: The First and Last Days of the War on Drugs*. Bloomsbury (London & New York)

5 UNODC (2018b) *World Drugs Report 2018 - Drug demand and supply*. <https://www.unodc.org/wdr2018/en/drug-demand-and-supply.html>

6 Ellyatt, H. (2015) *Global drugs trade ‘as strong as ever’ as fight fails*. CNBC. <https://www.cnbc.com/id/100957882>

7 May, C. (2017) *Transnational Crime and the Developing World - Global Financial Integrity*. <https://www.gfintegrity.org/report/transnational-crime-and-the-developing-world/>. This report stressed that the covert nature of illicit drugs operations and transactions greater hamper accurate calculations of the sector’s worth.



'trending upward'.<sup>8</sup> More recent data from emerging global economies such as Brazil,<sup>9</sup> China,<sup>10</sup> Argentina,<sup>11</sup> and India,<sup>12</sup> and developing countries in Africa<sup>13</sup> and Asia,<sup>14</sup> suggest illegal drugs have never been used by so many people or been so available, while the United States remains the highest illicit drug-using nation.

In 2009, decriing the failure to restrict the illicit production, trade and use of drugs in the previous decade, United Nations Member States adopted the *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem*.<sup>15</sup> This declaration established 2019 as a target date for states to eliminate or reduce significantly and measurably the 'drugs problem'. In 2018, the International Drug Policy Consortium (IDPC) produced a 'Shadow Report' showing that far from eliminating or significantly reducing the problem, the scale of drug cultivation, production, trafficking and use has increased exponentially over the past decade, and the negative impacts on human rights have been severe.<sup>16</sup>

The resilience – and indeed predicted growth<sup>17</sup> – of the global market exists despite the vast number of people across the world who are prosecuted and jailed for drug offences (production, trafficking, possession, sale, use etc.) and despite the billions of dollars spent each year in efforts to enforce anti-drug legislation.

## Global impact

It has been argued that "the war on drugs amounts to a transfer of the economic, political, social and environmental costs of prohibition from rich consumer countries to poorer producer and transit countries in return for a few dollars in aid."<sup>18</sup> The impact of the drug trade on

global and national economies, civil security, democracy and sustainable global development is well-documented in cautionary and increasingly alarming analysis.<sup>19</sup>

**“Drug trafficking has a destabilizing effect on all countries involved, regardless of whether they are a source, processing, transit, and/or market country. The burden placed by violence, public health threats, and economic distortions threatens the ability of developing countries to devote meaningful resources to domestic resource mobilization.”<sup>20</sup>**

The most egregious examples of continual socio-political disruption and violence, in Mexico, Columbia, Central American states and, since 2016, the Philippines, grab news headlines but elsewhere the presence of narco-profits steadily erodes state and social institutions through corruption and money laundering and the reinforcement of non-democratic, non-state forces. Evidently the war on drugs has failed – and is still failing – to curtail supply or demand or the violence associated with the trade (for more details, see Section 4), even if the numbers of those incarcerated and the quantity of drugs intercepted and destroyed rises annually – which may be considered by some to be sufficient success. These have been the conclusions of numerous public announcements and studies since the 1980s, despite national authorities (and their electorates) doggedly adhering to policies that manifestly do not achieve their desired objectives.<sup>21</sup>

- 8 European Monitoring Centre for Drugs and Drug Addiction (2016) *European Drug Report 2016: Trends and Developments* <http://www.emcdda.europa.eu/system/files/publications/2637/TDAT16001ENN.pdf>
- 9 Miraglia, P. (2016) *Drugs and Drug Trafficking in Brazil: Trends and Policies*. Foreign Policy at Brookings - Center for 21st Century Security and Intelligence Latin America Initiative. <https://www.brookings.edu/wp-content/uploads/2016/07/Miraglia-Brazil-final.pdf>
- 10 Zhang, S. & Chin, K. (2016) *A People's War: China's Struggle to Contain its Illicit Drug Problem*. Foreign Policy at Brookings - Center for 21st Century Security and Intelligence Latin America Initiative. <https://www.brookings.edu/wp-content/uploads/2016/07/A-Peoples-War-final.pdf>
- 11 Daugherty, A. (2015) *Argentina Feeling Impact of Domestic Drug Abuse*. InSight Crime. <http://www.insightcrime.org/news-briefs/argentina-feeling-impact-of-domestic-drug-abuse>
- 12 Mallapur, C. (2015) *India's Soaring Drug Problem: 455% Rise in Seizures IndiaSpend*. <http://www.indiaspend.com/cover-story/indias-soaring-drug-problem-455-rise-in-seizures-26787>
- 13 Ndinda, L. (2013) *Illegal drug use on the rise in Africa*. DW. <https://www.dw.com/en/illegal-drug-use-on-the-rise-in-africa/a-16614023>
- 14 Balasegaram, M. (2016) *Some Asian countries are dropping punitive approaches in favor of a health-centered approach*. The Diplomat. <http://thediplomat.com/2016/05/asias-war-on-drugs/>
- 15 UNODC (2009) *Political Declaration and Plan of Action on International Cooperation towards an Integrated and Balanced Strategy to Counter the World Drug Problem*. [https://www.unodc.org/documents/commissions/CND/CND\\_Sessions/CND\\_52/Political-Declaration2009\\_V0984963\\_E.pdf](https://www.unodc.org/documents/commissions/CND/CND_Sessions/CND_52/Political-Declaration2009_V0984963_E.pdf)
- 16 IDPC (2018) *Taking Stock: A Decade Of Drug Policy*. A Civil Society Shadow Report. [http://filesserver.idpc.net/library/Shadow\\_Report\\_FINAL\\_ENGLISH.pdf](http://filesserver.idpc.net/library/Shadow_Report_FINAL_ENGLISH.pdf)
- 17 Travis, A. (2012) *Global illicit drug users to rise 25% by 2050, says UN*. The Guardian. <https://www.theguardian.com/society/2012/jun/26/global-drug-users-rise-un>
- 18 Gathara, P. (2017) *Ridiculous Sums of Money: Why the War of Drugs Has Failed*. The Elephant. <https://www.theelephant.info/features/2017/04/06/ridiculous-sums-of-money-why-the-war-on-drugs-has-failed/>
- 19 LSE Ideas (eds) (2014) *Ending the Drug Wars: Report of the LSE Expert Group on the Economics of Drug Policy*. <http://www.lse.ac.uk/ideas/Assets/Documents/reports/LSE-IDEAS-Ending-the-Drug-Wars.pdf>
- 20 May, C. op. cit.
- 21 Inter alia and one of the earliest: Reuter, P., Crawford, G. & Cave, J. (1986) *Sealing the Borders: The Effects of Increased Military Participation in Drug Interdiction*. Rand Corporation. <https://www.rand.org/content/dam/rand/pubs/reports/2007/R3594.pdf>. This prescient US Defense Department-funded report found that the use of the armed forces to interdict drugs coming into the United States would have little or no effect on cocaine traffic and might raise the profits of cocaine cartels and manufacturers.

The damning IDPC report of late 2018 was prepared in advance of the international community's next Ministerial Segment at the Commission on Narcotic Drugs in March 2019 where they will decide upon a common strategy for the next ten years. However, as the foreword of the IDPC report asks, "But how can we plan the future without a serious and far-ranging assessment of the past's errors and successes?"<sup>22</sup>

## The war on migrant smuggling: early days

The global war against migrant smuggling is not easily distinguished from efforts to combat human trafficking because of the pervasive, but often erroneous practice of conflating two activities which have, under international normative law, been separately defined since 2002 in landmark instruments known as the Palermo Protocols.<sup>23</sup>

While efforts to prevent both migrant smuggling and human trafficking predate these protocols, they have been intensified over last two decades, and especially the last two or three years, with a greater and more concerted emphasis on criminalisation and criminal justice interventions.

### Heightened focus

While human trafficking continues to be a practice of great concern, with some reports suggesting the resultant 'human slavery' is more globally prevalent than ever,<sup>24</sup> migrant smuggling is gaining more attention and attracting specific legislation<sup>25</sup>, policy<sup>26</sup> and operational focus in so far that it is linked to the increased and contentious irregular international movement of economic migrants, asylum seekers and refugees.

“Every year, thousands of migrants and refugees, desperately seeking to escape violence, conflict and dire economic straits, die on perilous journeys by land, sea or air, often at the hands of criminal smugglers. Concerted, comprehensive action to counter this crime and protect people is needed.”<sup>27</sup>

In the current context, where human displacement is at its highest recorded level,<sup>28</sup> and with indicators suggesting that present trends are only likely to intensify in an increasingly globalised, connected and networked world, some have described this as the 'Age of Migration'.<sup>29</sup> At the same time, with significant demographic growth and regional demographic and displacement imbalance, the space for legal/regular migration and asylum appears to be shrinking, causing those who feel compelled to move to turn to human smugglers to achieve their objectives. The rise in migrant smuggling is therefore intrinsically associated with multiple drivers<sup>30</sup> but in particular it is a response to sustained and growing demand for mobility in a context of restrictive policies designed to prevent or limit mobility.

While the global development of anti-human trafficking legislation and interdiction efforts has been increasing steadily since the Palermo Protocols of 2002, the focus on combatting migrant smuggling is relatively new and is, arguably, more controversial<sup>31</sup> due to its close association with national and regional migration and refugee politics.<sup>32</sup> The electorates and policy makers of many states are expressing a diminishing appetite for migrants and refugees irrespective of factual realities around labour demand (in destination countries) or manageable numbers in the flows (as a proportion of destination countries population).

22 IDPC (2018) op.cit.

23 The Protocol against the Smuggling of Migrants by Land, Sea and Air (which supplements the United Nations Convention against Transnational Organized Crime) defines migrant smuggling as "...the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national."

24 The Global Slavery Index estimates there are 45.8 million people enslaved in the world today. <https://www.globalslaveryindex.org/>

25 A few recent examples include: Pakistan in 2018 (<https://www.unodc.org/pakistan/en/trafficking-in-persons-and-smuggling-of-migrants-laws-2018.html>); Egypt in 2016 (<https://www.iom.int/news/egypt-passes-new-anti-human-smuggling-law>) and Niger in 2015 (<https://www.reuters.com/article/us-europe-migrants-niger/niger-passes-law-to-tackle-migrant-smuggling-first-in-west-africa-idUSKBN-ONX1M020150512>).

26 For instance: European Commission (2015) *EU Action Plan against migrant smuggling (2015-2020)*. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. [https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu\\_action\\_plan\\_against\\_migrant\\_smuggling\\_en.pdf](https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/eu_action_plan_against_migrant_smuggling_en.pdf)

27 UNODC (2018a) op. cit.

28 UNHCR's annual Global Trends report says an unprecedented 68.5 million people had been uprooted from their homes by conflict and persecution at the end of 2017. The previous year also marked a record high. <https://www.unhcr.org/5b27be547.pdf>

29 Castles, S., de Haas, H. and Miller, M. (2014) *The Age of Migration: International Population Movements in the Modern World* (5th ed.) Palgrave Macmillan Ltd. (London)

30 For an in-depth analysis, see the Drivers revisited chapter of: Horwood, C., Forin, R. & Frouws, B. (Eds.). (2018). *Mixed Migration Review 2018*. Highlights. Interviews. Essays. Data. Mixed Migration Centre. <http://www.mixedmigration.org/resource/mixed-migration-review-2018/>

31 See, for example: Olakpe, O. (2015) *The Compatibility of the Protocol against the Smuggling of Migrants by Air, Land and Sea with International Human Rights Law*. Paper presented at the 16th Annual Student Human Rights Conference Migration and Human Rights: Perception v Reality March 7, 2015. <https://www.nottingham.ac.uk/hrlc/documents/student-conference-2015/oreva-olakpe-smuggling-protocol-compatibility.pdf>

32 Albahari, M. (2015) *Fatal Distractions: Mediterranean Migrations and the War on migrant smuggling*. CritCom. <http://councilforeuropean-studies.org/critcom/fatal-distractions-mediterranean-migrations-and-the-war-on-human-smuggling/>

## Convenient scapegoats?

Various commentators have identified these and other factors as the central reasons why lawmakers and politicians, in their efforts to identify a target for their disapproval, are now focusing on human smugglers.<sup>33</sup> The number of severe human rights violations and fatalities affecting irregular migrants and refugees while under the aegis of smugglers adds to the general opprobrium and the developing narrative that casts the smugglers as widely responsible for deaths and violations and who must therefore be punished and put out of business.

## Comparing commodities

In the drug trafficking business, it is clear what the commodity is: the illegal psychoactive substances that are produced, transported over vast distances, and bought and sold at great profit along supply chains that criss-cross the world. In the case of migrant smuggling, the stock in trade is less clear cut: although smugglers transport migrants, often across borders, and many cases along very long routes, and although this means migrants can fairly be described as their cargo, what is actually bought and sold in this business is access and facilitation.<sup>34</sup>

Nevertheless, the rapid expansion of the migrant smuggling business over recent years has led to a certain commodification of its customer base – migrants themselves. Their value to certain smugglers and associated criminals is no longer as humans with intrinsic value and rights but as commodities with economic value arising through exploitation. Not all those who work in some capacity as smugglers and facilitators of smuggling treat migrants badly, but a large proportion of all violations against those in mixed flows are caused directly or indirectly by smugglers. This section will compare and contrast the essential nature of the two commodities and identify where their commercial value and profit is derived, how it is maintained and then exploited.

## Drug trafficking

Illicit drugs are in general high value commodities,<sup>35</sup> small in size and low in weight with almost limitless storage and concealment potential. A compressed kilogram of cocaine, for example, is the size of a large paperback

book and has a wholesale street value, of around \$25,000 in the United States and more than \$50,000 in Europe.<sup>36</sup> After production in Colombia or Peru (the leading global producers) to the point of distribution it is moved typically using a variety of transportation means through vastly changing geography and climate but with minimal maintenance requirements apart from needing to be securely wrapped in airtight packaging. The drug is inanimate, inert, non-perishable and has no intrinsic value, requires no sustenance and nor is it vulnerable to abuse. Furthermore, it does not have any rights that can be violated, and cannot it be killed or exploited. Its value is a factor of demand at its intended destination. Extra additional value of drugs cannot be extracted during their journey except in terms of their value rising as it moves along the supply chain – as such the value is fixed and predictable to those controlling them. Generally, these characteristics are true for most illicit substances, even more so for synthetic varieties.

As drugs move, they increase in value due to transport and concealment and other associated costs (bribery, protection, etc.) and as they become relatively scarcer the further they travel from their point of production. They are therefore highly protected. In terms of their weight and volume, therefore, drugs are highly lucrative with huge economies of scale.

## Ever rising demand

Generally, drug trafficking responds to demand, where ever it is globally. Since the 1960s and 1970s the rise in demand and appetite for psychoactive drugs – increasingly controlled and illicit – has been exponential and continues to grow.<sup>37</sup> However, demand growth is also linked to availability and price and so due to the addictive characteristics of many illicit drugs those pushing or promoting known drugs for recreational purposes (and who may invent new varieties for the market) have the advantage in the medium to long term. Finally, as commodities, illicit drugs, unlike migrants are fundamentally illegal to possess, sell and transport. From governments' perspective, terms relating to illegality are only applied to migrants when they have broken laws, i.e. by entering territory without permission or the right documentation.

33 See, for example: Kyritsis, P. (2016) *Smugglers aren't the real problem in the refugee crisis*. Medium/The Establishment. <https://medium.com/the-establishment/smugglers-arent-the-real-problem-in-the-refugee-crisis-54a39e2d7e9e>; Watkins, K. (2015) *The EU's phoney war on people smugglers is costing the lives of desperate migrants*. The Independent. <https://www.independent.co.uk/voices/the-eu-s-phoney-war-on-people-smugglers-is-costing-the-lives-of-desperate-migrants-10476649.html>

34 Mohdin, A. (2017) *The economics of human smuggling makes it nearly impossible to stop*. Quartz. <https://qz.com/1046613/the-economics-of-human-smuggling-makes-it-nearly-impossible-to-stop/>

35 Ending the Drug Wars (LSE Ideas, op. cit.) estimates that cocaine and heroin attract a mark-up of nearly 1,300% and 2,300%, respectively, when exported. This compares to a 69% mark-up for coffee or 5% mark-up for silver when traded internationally from origin to sale. According to Transnational Crime and the Developing World (May, op. cit.) by the time cocaine reaches Australia, its price per kilo increases by almost 9,000% over the \$2,200 production site price in Colombia.

36 May op. cit.

37 UNODC (2018b) op. cit.

## Migrant smuggling

By contrast, humans as commodities are relatively large and heavy with problematic storage and concealment characteristics. They are animate, vocal with independent volition and agency, and therefore require significant maintenance throughout their passage from origin to destination. Maintenance deficits or negligence result in ‘damage’ – through thirst, starvation, illness, exposure to the elements, injury by accident or direct violence – which can affect smugglers’ income, as their human cargo may be abandoned, desert them, or die in transit.

### Extracting value

Clearly, unlike drugs, humans have rights that can be violated and are susceptible to abuse and exploitation. To certain smugglers and associated parties (such as gangs, traffickers, local community and certain state officials) migrants and refugees offer potential ‘extra’ value over and above the payment of fees through a range of violations, including onward sale to traffickers, robbery, sexual and labour exploitation (for financial or personal gain/gratification), theft for human body parts, payment of bribes and kidnapping for ransom (extortion). Unlike drugs, the value of these human commodities to smugglers, is generally limited on arrival at their destination. In many cases value is first extracted prior to departure in the form of fees (or at least down-payments) and then again en route through extortion and other violations.

It is not uncommon for such upfront fees to constitute less than half of the total costs – many of them unforeseen and met unwillingly – paid by migrants during their journeys. In Somaliland and Ethiopia, for example, migrants report that smugglers charge prospective clients very low or minimal fees just to lure them on the journey, which before long leads them to being abducted in Sudan, Egypt and Libya, often brutally, until relatives pay considerable ransoms for their release. Some migrants moving irregularly from Central America into the United States are forced by drugs gangs to be carriers, or ‘mules’, of illicit substances as they cross the border.

### Other models

This is not the only smuggler/client model. In some cases, and along some smuggling routes, systems have developed where final payments to smugglers are dependent on safe and sound delivery to the agreed destination point. These practices are more common where the clients are wealthier and more sophisticated, better connected and where the smugglers are known to clients and their communities.<sup>38</sup> In such cases, the success of the business model depends on good

treatment of migrants to ensure future business through word of mouth; just as with hotels and restaurants, when it comes to this type of migrant smuggling, customer ratings and reputation matter.

Regardless of where value is extracted from smuggled migrants, a key point that distinguishes this growing<sup>39</sup> business from drug smuggling is that customer demand lies principally at points of departure, rather than destination. This remains true if even if demand tends to grow in response to changing circumstances in destination countries, such as an increase in job opportunities,<sup>40</sup> or tighter restrictions on regular migration. Moreover, such changes have minimal impact on demand from the many who travel to seek asylum, rather than for economic reasons.

### Misdirection and propaganda as policy

Historically, the use of misdirection by those in power is well established. Using misdirection, exploiting fears through exaggeration, and creating counter-factual associations are well-tried elements of propaganda. They are evident in the wars against illicit drugs and, more recently, against human smugglers.

Concerning drugs, a pertinent example of this is seen in the revelation to a journalist by John Ehrlichman, Nixon’s domestic policy chief in the late sixties:

“The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: The anti-war [Vietnam] left and black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalising both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”<sup>41</sup>

38 Tinti & Reitano op. cit.

39 UNODC (2018a) op. cit.

40 De Haas, H. (2012) *Migration... it's the economy, stupid!* Blog post. <http://heindehaas.blogspot.com/2012/03/migration-its-economy-stupid.html>

41 Baum, D. (2016) *Legalize it All - How to Win the War on Drugs*. Harper’s Magazine. <https://harpers.org/archive/2016/04/legalize-it-all/>.

Some question the accuracy of the UN's classification of illicit drugs, pointing to discrepancies with independent expert assessments of risks.<sup>42</sup> Clearly, the politicization of the whole subject cannot be divorced from policy choice and formulation.

### **Crocodile tears**

So too with the emerging war against human smugglers. Many commentators suggest that the vitriol vented against human smugglers in recent years is a smokescreen to hide what are in fact policies directed against migrants and refugees. And while several leaders in Europe, Australia and the US have cleared the air in being more open in their desire to curtail irregular migration, some would argue that more smoke has appeared in the form of anti-smuggler rhetoric couched in terms of concern for the lives and safety of irregular migrants. As this paper will explore, the concrete actions taken in the name of the war against smugglers – stopping irregular migrant boats, returning people to unsafe third countries, externalizing borders and procedures, the long-term detention of refugees and migrants, reduction of resettlement quotas, and more robust return rules – and the impact some of these actions have on fatality rates in the Mediterranean, point to a certain disingenuousness; in other words, to more misdirection.

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42 The Global Commission on Drug Policy (2017) *The World Drug Perception Problem: Countering Prejudices About People Who Use Drugs*. <http://www.globalcommissionondrugs.org/reports/changing-perceptions/>

**Photo credit:** Carlos Spottorno / Panos.  
Mediterranean, nr Lampedusa, Italy (2014)

Officers on a Guardia Civil (Spanish police) airplane patrol the sea in search for migrants coming across the Mediterranean on boats. They're also looking out for migrant smugglers. They were operating under the umbrella of Frontex or the 'European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union'.



# Section 2: Comparing dynamics and modalities

## 2.1: Black market characteristics

As black-market enterprises operating under special economic dynamics, migrant smuggling and illegal immigrant labour can be compared, in theory at least, with, *inter alia*, illegal drug trafficking, prostitution, the underground trade in body parts (such as kidneys,) firearms inside gun-free jurisdictions, or even alcohol during Prohibition. Black markets do not always operate as normal markets in relation to regular businesses models of supply and demand. Instead, they often exhibit characteristics of monopolies, including high barriers to entry, non-application of contract or criminal law, violation of human rights, and the generation, by limiting competition and restricting output, of huge profits.<sup>1</sup>

This has been long-observed in the illicit drugs trade and is now becoming increasingly characteristic of the migrant smuggling market. According to a recent analysis, 'another disadvantage that is a feature of black markets, especially in the illegal drug market, is that consumers tend to be captives of the underground economy without legal or medical recourse.'<sup>2</sup> This is very evident in migrant smuggling where migrants are under the control and at the mercy of their smugglers – amongst others – once they have engaged and started moving with them.

## 2.2: Associations with violent crime

### Illicit drugs

Illicit drug production, trafficking, distribution and sale has been and continues to be closely associated with

violent crime – dominated as it is by globalised criminal networks that include cartels, various mafias, triads, yakuza, camorra, bratvas and countless street gangs.<sup>3</sup> Enforcing their will, protecting their trade, territory and themselves, terrorizing their enemies and competitors, and suborning state officials (in the legislative, judiciary and executive) is often carried out with threats of extreme violence. While civilians unconnected to such organisations' activities sometimes fall foul of their brutality and in-fighting or get caught up in government counter-trafficking efforts, victims are for the most part members of competing drugs gangs.

Violence associated with drugs is alarming both in terms of numbers of affected people and its extreme viciousness – often involving disappearances and executions with mutilation, dismemberment and beheadings. That the drugs business engenders brutal violence is well-documented; two recent examples illustrate scale and scope. In July 2015, the Mexican government released new data showing that between 2007 and 2014 more than 164,000 people were victims of homicide. In the first six months of 2018, Mexico recorded almost 16,000 murders, the highest number since records began in 1997<sup>4</sup> - this figure rose to over 33,000 by the end of the year.<sup>5</sup> The country also registered a record number of murders in 2017.<sup>6</sup> Analysts estimate that those directly involved in drugs-related deaths account for between 35 and 55 percent of these totals.<sup>7</sup>

### Philippines' deadly crackdown

In another, very different, iteration of associated violence, anti-drugs enforcement units, police and vigilante groups in the Philippines have reportedly conducted at least 12,000 extrajudicial killings<sup>8</sup> of suspected drug dealers (and users) since 2016, and the killings continue despite international condemnation of this controversial but

1 Ross, S. (2016) *The Economics of Illicit Drug Trafficking*. Investopedia. <http://www.investopedia.com/articles/personal-finance/080116/economics-illicit-drug-trafficking.asp>

2 Ibid.

3 *Inter alia*, some of the most notorious and powerful are the Mexican (Sinaloa), Columbian (Urabeños) and Peruvian (Barrio King) cartels, and particular mafia groups such as the 'Ndrangheta in Italy, Yamaguchi-gumi yakuza in Japan, the Solntsevskaya Bratva in Russia and the Abergil family in Israel.

4 Associated Press (2018) *Mexico: homicides up 16% in 2018, breaking own records for violence*. Published in The Guardian. <https://www.theguardian.com/world/2018/jul/23/mexico-crime-homicides-violence-up-report>

5 Mega, E.R., (2019) *Violent Drug Cartels Stifle Mexican Science*. Nature magazine. Available at: <https://www.nature.com/articles/d41586-019-00458-6>

6 Reuters (2017) *Murder statistics reveal 2017 to be the deadliest year in Mexico's history*. Published in The Guardian. <https://www.theguardian.com/world/2017/dec/23/new-figures-reveal-2017-to-be-the-deadliest-year-in-mexicos-history>

7 Quoted in: Breslow, K. (2015) *The Staggering Death Toll of Mexico's Drug War*. PBS. <https://www.pbs.org/wgbh/frontline/article/the-staggering-death-toll-of-mexicos-drug-war/> Many analysts distrust official data in Mexico where they claim the government is trying to downplay drugs related homicide.

8 Human Rights Watch (2018) *Philippines: Duterte's 'Drug War' Claims 12,000+ Lives*. <https://www.hrw.org/news/2018/01/18/philippines-dutertes-drug-war-claims-12000-lives>

domestically supported new policy.<sup>9</sup> In February 2018, a Filipino senator suggested the true figure may be more than 20,000 killings.<sup>10</sup>

A more nuanced factor related to drugs crime and homicide is that they often occur in environments where the implementation of rule of law is limited, corruption and collusion by state officials is rife, investigation of homicide is weak and prosecution of perpetrators rare.<sup>11</sup> In such environments, not only will those using violence enjoy considerable impunity making murder more likely, but also if people fear violence from others they may commit homicide merely in order to protect themselves from being victims of the same.<sup>12</sup>

## Migrant smuggling

By contrast, the violence associated with migrant smuggling almost exclusively targets the migrants and refugees under the smuggler's care. The dominant perpetrators are the smugglers themselves followed by certain state officials but also include other criminals and local community members as well as, rarely, other refugees or migrants.<sup>13</sup> Violence against those smuggled is more intense along certain routes and in certain countries, but overall the patterns are the same: the violence is directed towards the smuggled people on the move. While exact numbers of migrant/refugee victims of violence and death are unknown, the International Organization for Migration calculated in 2017 that at least 60,000 migrants have died since 2000, and that nearly 25,000 died or disappeared since the start of 2014.<sup>14</sup> Those who die are mostly victims of direct and indirect negligence by smugglers, their own risk-taking activities or are victims of malicious and targeted violence.<sup>15</sup>

## Less violence

It is rare to hear of competing smuggling groups battling each other and when it happens the casualties are few. That smugglers are often armed appears to be a strong deterrent to competitors or law enforcement agents. Still rarer are reports of casualties or violence resulting from encounters between human smugglers and state officials. The overwhelming impression is that, to date, migrant smuggling as an illegal activity is lubricated and facilitated through financial bribes given to certain rent-seeking state officials by certain smugglers. Violence, as seen in the drugs wars, is not a characteristic of the war against migrant smuggling to date. But there are indications that this could change as restrictions on regular movement grow (forcing more people to use smugglers) and as larger organized criminal networks (more used to using violence to intimidate state officials and rivals) become more involved in migrant smuggling.<sup>16</sup>

## 2.3: Organisational characteristics

### Illicit drugs

The organisation around drug production, trafficking, protection rackets and defence of territory and associated violence is well documented. The prevailing view is that the industry is run by 'complex organizations with highly defined command-and-control structures',<sup>17</sup> with the drug lord or capo at the top in command of lieutenants, hitmen, 'falcons' (halcones – low level eyes and ears of the gangs) and others including drug producers, drug suppliers, money launderers, financiers, and arms suppliers. Ruling with fear and terror, non-compliance, disloyalty and treachery are dealt with harshly, with execution being the frequent punishment.

There is growing evidence that the previously held idea that drug cartels are monolithic monopolists may be

- 9 In August 2017, 58 alleged users and dealers were killed in Manila in a three-day 'crackdown' that President Duterte vowed to continue until the 'drugs problem' in the Philippines was eliminated. See: Villamor, F. (2017) *Philippine Drug War Logs Deadliest Week Yet: 58 Killed in 3 Days*. <https://www.nytimes.com/2017/08/17/world/asia/philippines-duterte-drug-war.html>  
In July 2018, Duterte said the drug war would remain 'relentless and chilling'. See: Mogato, M. & Petty, M. (2018) *Philippines' Duterte hit by new ICC complaint over deadly drug war*. <https://www.reuters.com/article/us-philippines-drugs/philippines-duterte-hit-by-new-icc-complaint-over-deadly-drug-war-idUSKCN1LD0CS>
- 10 Regencia, T. (2018) *Senator: Rodrigo Duterte's drug war has killed 20,000*. Al Jazeera. <https://www.aljazeera.com/news/2018/02/senator-rodrigo-duterte-drug-war-killed-20000-180221134139202.html>
- 11 In Mexico, for example, four of every five homicides, and 90 percent of all crimes, are unsolved. See: Fredrick, J. (2018) *Mexico Registers Its Highest Number of Homicides on Record*. <https://www.npr.org/sections/parallels/2018/01/25/580239712/mexico-registers-its-highest-homicides-on-record>
- 12 O'Flaherty, B. & Rajiv Sethi, R. (2010) *Homicide in black and white*. *Journal of Urban Economics*. <http://www.columbia.edu/~rs328/Homicide.pdf>
- 13 Data from 4Mi interviews conducted with refugees and migrants along seven migratory routes between 2017-2018 suggest that of over 7,500 incidents, from robbery to rape to murder, over 50% were directly attributed to smugglers. See section 3 of: Horwood, C., Forin, R. & Frouws, B. (Eds.) op. cit. 4Mi is a continuous migrant survey and interview initiative started in 2014 and operated by the Mixed Migration Centre (MMC) under the overall aegis of the Danish Refugee Council (DRC).
- 14 IOM (2017) *Fatal Journeys Volume 3 Part 2: Improving Data on Missing Migrants*. [https://publications.iom.int/system/files/pdf/fatal\\_journeys\\_3\\_part2.pdf](https://publications.iom.int/system/files/pdf/fatal_journeys_3_part2.pdf)
- 15 UNODC (2018a) op. cit; IOM (2017) op. cit.
- 16 Tinti & Reitano op. cit.; Reuters (2017) *Fighting between Libyan smugglers kills 22 migrants*: IOM. <https://www.reuters.com/article/us-europe-migrants-italy-iom/fighting-between-libyan-smugglers-kills-22-migrants-iom-idUSKBN16E1IG>
- 17 National Drug Intelligence Center - *Drug Trafficking Organizations/National Drug Threat Assessment 2010*. United States Department of Justice. <https://www.justice.gov/archive/ndic/>



challenged.<sup>18</sup> Drug trafficking organizations (DTOs) have increased in number and have reportedly diversified in structure as part of a risk-minimising adaptation, partly in response to sustained law enforcement implementation.

This description of international drug smuggling groups itself must be regarded as dynamic and evolutionary. The horizontal, informal, and loosely connected nodes succeeded the more tightly organized cartels that preceded them.<sup>19</sup>

## Migrant smuggling

Available evidence suggests that migrant smuggling, partly because it is less ruthless and less dominated by terror and violence,<sup>20</sup> and perhaps because it has faced less interdiction from law enforcement, has evolved more loosely and spontaneously. However, perhaps not surprisingly, in the last two years there has been a growing stream of articles about the involvement of the mafia in Italy in migrant smuggling. If articles such as the one headlined 'Migrants more profitable than drugs'<sup>21</sup> bear any truth, then Italy may not be the only location where criminal organisations profit from irregular migration and Italy's asylum system, as well as from drug trafficking.<sup>22</sup>

Most research indicates that migrant smuggling services are rarely controlled by overarching mafia-like criminal structures that have traditionally dominated drug-smuggling activities from the source to the destination country. Various researchers who have interviewed individuals working in the migrant smuggling business in New York, Los Angeles, Fuzhou (China), at the Mexican-US border, as well as in the Horn of Africa and throughout West Africa, found that while there is evidence of organized criminal gangs, most smugglers were merely involved in a range of small-scale smuggling activities. For them the smuggling industry is simply an opportunity for individuals to earn additional income.

Generally, smuggling networks seem not to be involved in other forms of major transnational organized crime. In some parts of the world, however, smuggling networks have links with large violent criminal organizations that they have to pay for the 'right' to safe passage for

migrants, for example, along the border between the United States and Mexico. In other cases, smugglers may hand over migrants to such groups for extortion of ransom, robbery or other exploitation.<sup>23</sup>

## Blurred lines in Libya

Different models often operate in tandem, although individual operators run the risk of being overtaken or intimidated out of business by organized groups when profits become sufficiently large to attract organized criminals, as reported in Libya in 2015 and 2016.<sup>24</sup> This country is also where the lines between migrant smuggling and human trafficking are, with far-reaching consequences, blurred perhaps more than anywhere else in the world:

The levels of brutality and exploitation [migrants] experience in Libya's turbulent transitional environment have led to smuggling and trafficking groups being bundled under one catch-all heading by authorities and policymakers, and targeted as the root cause of the migration phenomenon. In many respects, this would appear to conveniently serve the interests of EU leaders and governments, who choose to disguise the anti-migration drive they urgently seek support for behind a policy of cracking down on both trafficking and smuggling rings, which they conflate as a common enemy, and one and the same.<sup>25</sup>

In most regions of the world there therefore exists a complex market for highly differentiated smuggling services offered by a multitude of providers from which potential migrants can choose. However, in some areas and particular situations a concentration of control can be seen, as observed along the coastal towns of Turkey during the mass (smuggled) exodus of Syrian refugees and others as part of the European 2015-2016 migrant 'crisis'.<sup>26</sup>

## The saviour paradox

Smuggled migrants often perceive their smugglers as providers of a significant, if not unique, layer of protection and as their 'saviours', even though considerable evidence suggests that most violations against migrants occur while they are under the 'protection' of their smugglers. 4Mi data from over 5,000 interviews with migrants and

18 A thoroughly referenced analysis of reports and new developments are published in: Benson, J & Decker, S. (2010) *The organizational structure of international drug smuggling*. Journal of Criminal Justice. [http://archives.cerium.ca/IMG/pdf/Benson\\_Decker\\_-\\_The\\_Organizational\\_Structure\\_of\\_International\\_Drug\\_Sumgglng.pdf](http://archives.cerium.ca/IMG/pdf/Benson_Decker_-_The_Organizational_Structure_of_International_Drug_Sumgglng.pdf)

19 Ibid. p.136

20 Some locations are notoriously violent and exceptional, for example, Libya and the Mexican border towns as well as eastern Sudan, where smugglers often sell migrants to traffickers.

21 Nadeau, B. (2018) *Migrants are more profitable than drugs: how the mafia infiltrated Italy's asylum system*. The Guardian. <https://www.theguardian.com/news/2018/feb/01/migrants-more-profitable-than-drugs-how-mafia-infiltrated-italy-asylum-system>

22 See also: Perry, A. & Agius, C. (2015) *Migrants and the New Mediterranean Mafia*. Newsweek. <https://www.newsweek.com/2015/06/19/migrants-and-new-mediterranean-mafia-341468.html>

23 UNODC (2018a) op. cit.

24 Ibid.

25 Reitano T. et al (2018) *Responding to the Human Trafficking-Migrant Smuggling Nexus with a focus on the situation in Libya*. Global Initiative Against Transnational Organized Crime. <http://globalinitiative.net/human-trafficking-smuggling-nexus-in-libya/>

26 Tinti & Reitano op. cit.

refugees on the move along seven migratory routes in 2017/8 indicated that 56 per cent agreed with the statement that their smugglers helped them achieve their goal of migrating to another country. At the same time 51 per cent reported that they were misled in one way or another by smugglers and identified smugglers as directly responsible for over 50 per cent of over 7,500 identified 'incidents' (right violations and fatalities).<sup>27</sup> This paradox is part of the migrant/smuggler relationship. 'A lack of diversity within the image of smuggling portrays the business in an incorrect way'.<sup>28</sup>

People on the move terrestrially need to be accompanied, managed, controlled (and are exploited in cases of 'aggravated smuggling'<sup>29</sup> along the way) by other people. For many involved, often living in economically distressed environments with high levels of unemployment, smuggling migrants is a 'cottage industry' and a more opportunistic activity for people not involved in other criminal activity. Many operators only smuggle migrants as a side-line, supplementing their normal income from other, legal, activities. As such, to date, the evidence suggests that hardened criminal enterprises do not own and have not deeply or pervasively penetrated the migrant smuggling market. However, as we have seen, this does not mean such enterprises play no role in it today or will not increase their participation as potential profits from smuggling prove irresistible.

### From loose associations...

As smuggled migrants cross different territories and face multiple localized obstacles and authorities (to be evaded or paid off), different networks of national smugglers need to work together in a loose association where full responsibility or profit accumulation resides with no single group. The pattern appears to be a horizontal engagement of actors with some vertical, hierarchical characteristics in certain-high value nodes or hotspots, such as departure points from Turkey to Greece, or coastal points in Libya, or the Mexican-US border. Here there is an intersection with organized crime where the concentration of smuggled people is significant, the specialized needs (for example, boats and engines) are apparent, and where there are large profits to be made. Some calculate that those organizing the maritime movement from Turkey to Greece (involving just 20 minutes in the water) earned at the peak times in 2015, \$5 million per day, while in Libya smugglers netted between \$225 and \$323 million in 2014.<sup>30</sup> Little wonder

that at concentrations of this kind, the entrepreneurial, opportunistic smuggler is eclipsed by more structured and potentially more ruthless criminal networks.

### ...to nascent networks

In a 2018 report of its first two years of work, Europol's European Migrant Smuggling Centre (EMSC) asserted that 'migrant smugglers are becoming more and more organised, establishing sophisticated professional networks, operating transnationally from source towards destination countries'. In the same report they describe migrant smugglers as 'ruthless', 'rent-seeking' and 'violent criminals'.<sup>31</sup>

Migrant smuggling has emerged as a highly profitable and widespread criminal activity for organised crime in the EU. The migrant smuggling business is now a large, profitable and sophisticated criminal market, comparable to the European drug markets.<sup>32</sup>

As we have seen, the 'cargo' itself differs considerably between migrant smugglers and drug traffickers. Unlike drugs, people get sick or die, they change their minds, run out of money, get detained by authorities or flee their smugglers. Other, new clients, may join smugglers and smuggled groups along the way. The payment structure can be piecemeal, with migrants and refugees paying smugglers for certain legs of their journey. All these factors are better contained in an organizational structure that is loose and adaptive.

It can be assumed that both drugs trafficking and migrant smuggling operate with a strong sense of pragmatism and logic, specialization where needed, and adaptation to prevailing conditions to minimize risk and maximize profit. As profits rise, so too does the impulse to organize more vertically and absorb or eliminate the less-organized or spontaneous players. These are the EMSC's recent findings, especially along more lucrative routes, such as the Middle East to Europe passage.<sup>33</sup>

27 The data is taken from 4Mi summaries in Section 3 of Horwood, C., Forin, R. & Frouws, B. (Eds.) op. cit.

28 Van Liempt, I. (2016) *A Critical Insight into Europe's Criminalisation of Human Smuggling*. Swedish Institute for European Policy Studies. <http://www.sieps.se/en/publications/2016/a-critical-insight-into-europes-criminalisation-of-human-smuggling-20163epa/>

29 The Palermo Protocol refers to the abuse that may accompany smuggling as 'aggravating circumstances.'

30 Tinti & Reitano op. cit.

31 Europol (2018) op. cit. <https://www.europol.europa.eu/publications-documents/two-years-of-emsc>

32 European Union (2017) *Serious and Organised Crime Threat Assessment - Crime in the age of technology* <https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment-2017>; see also: UNODC (2011) *The role of organized crime in the smuggling of migrants from West Africa to the European Union*. <https://www.unodc.org/unodc/en/human-trafficking/migrant-smuggling/the-role-of-organized-crime-in-the-smuggling-of-migrants-from-west-africa-to-the-european-union.html>

33 Europol/EMSC op. cit.

## 2.4: Establishment and embedment

### Drug trafficking

Evidently, drug trafficking organisations have a relatively long history when compared to migrant smugglers. Some were already organized and operating in other sectors before they turned to drugs. Like the Italian mafias who started serious involvement in drugs from the 1970s, or the Gulf Cartel in Mexico that was established running alcohol into the US during Prohibition in the 1930s and then started trafficking cocaine in the 1980s.

Many Latin American cartels started in the 1960s with marijuana and responded to the worldwide booming demand for other psychoactive drugs during the 1960s and 1970s, with a shift into cocaine and other substances by the early 1980s. In Asia, from 1979, warlords and strongmen started widespread cultivation of opium in lawless Afghanistan – leading to their becoming the leading global heroin producer from the early 1990s, eclipsing Myanmar and the Golden Triangle. Generally, despite unceasing rivalry and rise and fall of drug empires and the proliferation of new players, organized drug trafficking has been firmly established for at least 45 to 50 years – two generations.

### Normalisation

This means that for numerous communities, often in remote or neglected or less accessible locations (mountains and jungles or ghettos and favelas), the drug business is often the only economic opportunity and is deeply embedded in society. What may have started through coercion is now the way of life; those involved may know no other, not only in terms of economics, but also their relationship with drugs lords (often benign) and their foot soldiers (less so, if uncooperative). The familiarity and regularity of conflict with law enforcement conflict agents, of raids and arrests and the reality that many state officials will be suborned by the drug business (by force or by bribery or both) is strongly established. In many locations it is the norm.

Additionally, the scale of the profits and the level of money laundering and reinvestment in legitimate businesses has led to the illicit drugs economy being so deeply interwoven with the legal economy that separating the two after fifty years must seem virtually impossible.

### Migrant smuggling

By contrast, the migrant smuggling phenomenon is relatively recent. While it influences the societies and economies where it is specifically active, it does not have a long history and cannot be said to have infested or enmeshed itself in national economies. As distinct from human trafficking, which has its own separate history, the business of taking people across borders is relatively recent and typically thrives when border restrictions increase, as they have since the 1990s.

### A global phenomenon

The US and other prosperous locations (such as Hong Kong, Europe, Canada, Australia) have typically been the destinations that smugglers help people to access irregularly. But now, like drugs, virtually every country in the world is affected by migrant smuggling, be it as a country of origin, transit, or destination. Here are some brief examples:

- The term snakehead refers to those facilitating the illicit transport of Chinese migrants into the United States and other Western countries.<sup>34</sup> Snakeheads first made an appearance in the 1970s taking clients from Fuzhou and Changle to Hong Kong. Today, snakehead operations have expanded into other countries, but their customers are rarely found in terrestrial routes, preferring flights using false documents. Most snakehead customers still reportedly originate from the Fujian province in China but are not normally included in mixed migration analysis because they are primarily labour migrants. However, they are commonly exploited when smuggling turns to a form of trafficking as those transporting them force them to work to repay fictitious extra costs or the original agreed fees that the clients were unable to pay up front.
- On the other side of the world, coyotes smuggle people across the Mexico–United States border. Once dominated in the 1980s and 90s by local coyotes charging relatively small sums, now well-organized syndicates have entered the smuggling industry in Mexico. Coyotes have become more sophisticated in their operations, servicing, often violently, the estimated 350,000-500,000 migrants entering the United States annually in the 1990s and early 2000s. According to *The Economist* in 2005 the business was worth over \$5 billion each year.<sup>35</sup> The US National Border Patrol Strategic Plan was first developed in 1994 to deal with the perception that borders were

34 For further details, see, for example, Keefe, P. (2006) *The Snakehead*. *The New Yorker*. <https://www.newyorker.com/magazine/2006/04/24/the-snakehead>

35 *The Economist* (2015) *Decapitating the snakeheads* How governments could beat the people-smugglers at their own game. <http://www.economist.com/node/4488653>

being overrun by illegal immigrants and drug dealers. It was then updated in 2004 and 2012.

- In **Africa**, migrant smugglers started taking young men mainly from West and North Africa into Libya and by sea to Europe (initially focusing on Spain and Spanish islands off the Africa coast during the 1990s). As European border restrictions became tighter, the smuggling business boomed – as did Spanish and the European Union efforts to stop irregular migrants and boat people travelling from West Africa.
- Meanwhile, in the **Horn of Africa**, where drought, war, poor governance and endemic poverty are key drivers, the appetite to move increased in the early 2000s. The initial growth of smugglers focused on taking Somalis and Ethiopians to Yemen and then on to Saudi Arabia (predominantly Ethiopians). Later, new business opened for smugglers (and traffickers) taking Eritreans and Sudanese into Egypt and Israel, and by 2011 with the fall of Gaddafi in Libya (and the erection of the Israel/Egyptian wall in 2013) the number of smuggled migrants and refugees heading to Europe from the Horn rapidly increased, while others increasingly chose to head south to the then more welcoming Republic of South Africa.
- In **Turkey**, the rapid growth of the new billion-dollar smuggling industry did not start when Syria's civil war began in 2011, but when the millions of refugees in Turkey (and Jordan and Lebanon) decided to move on to Europe from 2014. By late 2015, at its peak, smugglers were estimated to be earning \$5 million per day (equivalent to almost \$2 billion per year).<sup>36</sup>

The date of establishment and embedment of migrant smuggling, therefore, is varied across the world and for the most part it is too early to say how dominant it now is in local and national economies, or how significant the profits are in terms of being reinvested in society or suborning/corrupting national institutions and officials.

### Varying economic dominance

Still, some examples, even if they are outliers, offer insight into the varying degrees to which smuggling can attain economic prominence: In the Niger town of **Agadez** – the gateway to the Sahara crossings – many types of smuggling, including of migrants, have long been a major part of the local economy<sup>37</sup>. In cities like **Juarez** on the US-Mexican border, migrant smuggling is well established and closely linked to other criminal enterprises, including drug trafficking, and has evolved in an already criminalized city. In the small port of **Obock** in Puntland, Somalia – the gateway to Yemen – the smuggler economy is dominant. **Tripoli** and other coastal areas of Libya – the gateway to Europe – are examples where

some 'kingpin' smugglers and various militia groups are currently making large profits from migrant smuggling. Migrant smuggling generates vast sums of money in the Turkish port of **Izmir**, but only plays a relatively minor role in this city of 4.2 million inhabitants that dates back to antiquity.

These examples stand in contrast to locations in Latin or Central America where drug money and its effects have unambiguously overwhelmed areas of cities such as Caracas in Venezuela, Cali in Columbia, San Pedro Sula and District Central in Honduras, Ananindeua and Marabá, in Brazil, and even the urban and rural areas of whole countries, such as Honduras, El Salvador, Guatemala in the 'Northern Triangle', where narco gangs hold sway.

Even if in remote border areas of some countries migrant smuggling dominates the existing grindingly poor economy and enriches a few, its scale, reach, and violence cannot compare to that of the drugs industry, which in some places has supplanted elected governments, and rules over the lives of millions of people.

However, unlike the drugs trade, these may be early days for migrant smuggling in terms of its absorption and domination by more organized and more ruthless criminal structures and subsequent entrenchment in societies.

## 2.5: Public perceptions

Similarly, in terms of social acceptance, there is a clear contrast between contexts where the illicit drugs industry has embedded and established itself and locations affected and active in migrant smuggling.

### Illicit drugs

#### Widespread condemnation

International, regional and national condemnation of the pervasive impact of the illicit drugs industry has been voiced for decades. Numerous studies have been conducted on the detrimental impacts, conventions and conferences held and action plans drawn up. Critically, some of those affected are frequently active in trying to resist drugs in their midst, often facing violent reprisals. In short, the drugs production and trafficking business, while embedded in many societies, is considered by most to be a social curse, a moral failing with deeply corrosive characteristics affecting all aspects of society. Even communities actively involved in or suborned by the drugs cartels recognise the deeply anti-social aspects of the trade, despite it providing employment and income.

<sup>36</sup> Tinti & Reitano op. cit.

<sup>37</sup> For more details, see the Keeping track section of: Horwood, C., Forin, R. & Frouws, B. (Eds.) op. cit.

In Afghanistan over ten years ago, when cultivation was significantly less than it is today, the opium economy reportedly generated an estimated 5.6 rural jobs for each hectare of poppy grown, and brought to farmers a readymade source of credit, a functioning transportation network, and reliable buyers and market access.<sup>38</sup> No other crop or finance arrangement could compete, but the knowledge that the cultivation of drugs was against the local culture and religion (drugs are *haram* in Islam) was and remains widespread, and no one is blind to the fact that the profits predominantly accrue to the local strongmen who tolerate little dissent.

## Far-reaching impact

Apart from the violence and deaths, and in some cases the forced displacement of communities due to the impact of the drugs trade and the wars against it, all over the world communities see with clarity its degrading influence on national institutions and democracy, but watch impotently as even incarcerated drug lords often continue to run their empires from behind bars. In destination countries the international drugs trade is widely condemned and seen as a social evil by governments, civil society, academia<sup>39</sup>, and even the liberal media<sup>40</sup>.

## Migrant smuggling

Migrant smuggling is quite different. Generally, the activities of smugglers are not stigmatised by local or national communities; often the opposite is true. Smuggled migrants provide welcome income to smugglers and many local communities, not to mention the numerous state officials who may profit directly or indirectly from the continued flows of smuggled people. In many contexts smugglers operate where national institutions are already weak and/or corrupt and where smuggling is not seen as a main instigator of social degradation, and indeed is often viewed as the exact opposite. Additionally, many governments make scant efforts to restrict transit movement and are opposed to push-backs, or do not cooperate with return of detained irregular migrants or failed asylum seekers.

## Growing demonization

Most destination countries – and several international organisations – in their desire to end irregular migration have, recently started to demonise migrant smuggling as a major social curse.<sup>41</sup> This they are doing through emerging policies and their public narratives which are to

some degree being echoed by some origin governments, where destination countries have cajoled them to engage in the international debate around irregular mobility. In policy documents there is consensus that ‘disrupting the business model of migrant smuggling’ is a key objective.<sup>42</sup> Origin countries may have come under bilateral pressure to concur and here there may also be a parallel with origin countries’ relationships with destination countries in the drugs war. Insofar that migrant smugglers and the environment in which they operate cause so many deaths and rights-violations to those in mixed flows, it could be argued that there is some justification for the anti-migrant smuggling narrative.

A noteworthy aspect of the world of migrant smuggling that likely differs from those involved in drug trafficking is that it involves numerous people who play minor parts or tangential roles. While such people contribute to a context that may be called migrant smuggling many would not identify themselves as players in the migrant smuggling business: a man runs a hostel full of migrants waiting for word of their onward journey, another is paid to produce false documentation in a capital hub, another guides migrants along an unpatrolled way across a border, yet another is a truck driver or skipper of a boat hired by smugglers to take people to particular locations. Even many full-time smugglers see themselves not as criminals but as facilitators, brokers, travel agents or simply businessmen. Others more self-conscious of their role may describe themselves in terms closer to dream fixers, saviours, heroes and angels. Indeed, those they smuggle successfully also may see them as such. The devil to some is the angel to others, it seems.<sup>43</sup>

## Whose agenda?

Furthermore, the international legislation against migrant smuggling (including, to a lesser degree, human trafficking) even if it is increasingly domesticated through new national laws, is seen as an external pressure serving someone else’s agenda. Within their own communities and culture migrant smugglers experience little if any censure socially or legally, so why would smugglers and those involved in smuggling carry any sense of shame or guilt? Those involved in drug trafficking cannot be oblivious to the fact that their activities are highly censured nationally and internationally which may partly explain they shield themselves with violence and fear. In terms of moral and social opprobrium, there are, therefore, significant differences between migrant smuggling and drugs trafficking.

38 Mansfield, D. & Pain, A. (2005) *Alternative Livelihoods: Substance or Slogan?* Afghanistan Research and Evaluation Unit. <https://areu.org.af/archives/publication/524>

39 The February 2019 edition of Nature Magazine also suggests that the danger drugs gangs pose is damaging scientific research in Mexico, see <https://www.nature.com/articles/d41586-019-00458-6>

40 See, for example, Baggini, J. (2018) *Middle-class cocaine users are guilty of causing harm – as are most people*. The Guardian. <https://www.theguardian.com/commentisfree/2018/may/29/middle-class-drug-users-guilty-david-gauke-cocaine>

41 The language used in UNODC’s Global Study on Smuggling of Migrants (op. cit.) is just one recent example of this trend.

42 European Commission (2015) op. cit.

43 For a deeper exploration of this theme with data, see the essay *Both Angels and Demons?* in: Horwood, C., Forin, R. & Frouws, B. (Eds.) op. cit.

## 2.6: Legal censure

### Illicit drugs

Every country in the world has criminal laws prohibiting the production, trafficking, possession and use of a wide range of psychoactive substances. (Recent examples of liberalisation will be discussed in a later section of this paper.) Evidence of these laws' impact is amply provided by statistics of the numbers of people arrested and sentenced for drug-related offences, and the vast amount of resources used to interdict and restrict drug trafficking.<sup>44</sup> Globally, more than eight out of ten drug offences relate to possession of narcotics, and those relating to trafficking for the most part involve only low-level offenders.<sup>45</sup>

Internationally, trafficking of illicit substances is addressed under the 1988 *United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*<sup>46</sup>, one of three major drug control treaties currently in force. It provides additional legal mechanisms for enforcing the 1961 *Single Convention on Narcotic Drugs* and the 1971 *Convention on Psychotropic Substances*.

This 1988 convention made it mandatory for signatory countries to 'adopt such measures as may be necessary to establish as criminal offences under its domestic law' (art. 3, § 1) all the activities related to the production, sale, transport, distribution, etc. of the substances included in the most restricted lists of the 1961 and 1971 conventions.

Criminalization also applies to the 'cultivation of opium poppy, coca bush or cannabis plants for the purpose of the production of narcotic drugs'. The convention distinguishes between the intent to traffic and personal consumption, stating that the latter should also be considered a criminal offence, but 'subject to the constitutional principles and the basic concepts of [the state's] legal system' (art. 3, § 2).

The convention entered into force on November 11, 1990 and there are currently 190 parties to it. A 2012 report by Harm Reduction International notes that 33 countries and territories retain the death penalty for drug offences, including 13 in which the sentence is mandatory,<sup>47</sup> although only six appear to implement capital punishment.<sup>48</sup>

### Migrant smuggling

The main international instrument dealing with migrant smuggling is the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, which entered into force on 28 January 2004 and is attached to the *UN Convention against Transnational Organized Crime*, adopted by General Assembly resolution 55/25 of 15 November 2000. Its two protocols dealing with smuggling and human trafficking<sup>49</sup> are known together (with a third firearms-related protocol<sup>50</sup>) as the Palermo Protocols. At the time of writing, there were 147 parties and 112 signatories to the smuggling protocol.<sup>51</sup>

The protocol related to migrant smuggling is not an exhaustive stand-alone legal framework; rather, it is part of a 'dense web of rights, obligations and responsibilities drawn not just from the Protocol and Convention but also from the law of the sea, human rights law, and refugee law.'<sup>52</sup>

### Weak laws

Generally, national legislation against migrant smuggling is weak and often conflated with other crimes, including human trafficking. Alternatively, where there is discrete legislation its enforcement and interpretation may be compromised by a sense that smuggling is a victimless crime (unlike trafficking) and therefore not too be punished very severely, if at all.

Between different nations there is a wide variety of legislation around the issue of smuggling, with some nations still trying to domesticate international law and others using it so weakly that it offers no deterrent.<sup>53</sup>

44 By illustration, US figures from 2015 indicate that almost half of all inmates in federal prisons and 16% of those in state prisons were detained for drug-related offences. The percentage of those in prison in 2015 for drug related offences in some other countries are: Thailand 65%, Italy 39%, Columbia 17%, Peru 24%, Bolivia 45%. For a fuller list, see UNODC (2015) *Global Prison Trends 2015*. [http://www.unodc.org/documents/ungass2016/Contributions/Civil/PenalReform/Drugs\\_and\\_imprisonment\\_PRI\\_submission\\_UNGASS.pdf](http://www.unodc.org/documents/ungass2016/Contributions/Civil/PenalReform/Drugs_and_imprisonment_PRI_submission_UNGASS.pdf)

45 Ibid.

46 For the full text of the convention see: <https://www.unodc.org/unodc/en/treaties/illicit-traffic.html>

47 Harm Reduction International (2012) *Death Penalty for Drug Offences Global Overview 2012: Tipping the Scales for Abolition*. <https://www.hri.global/contents/1290>

48 The Economist (2015). *Which countries have the death penalty for drug smuggling?* <https://www.economist.com/the-economist-explains/2015/04/28/which-countries-have-the-death-penalty-for-drug-smuggling>

49 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, was adopted by General Assembly resolution 55/25. It entered into force on 25 December 2003. <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

50 The third was the Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition.

51 UNODC - Status of Treaties <https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&msgid=XVIII-12-b&chapter=18&clang=en>

52 Gallagher, A. & David, F. (2014) *The International Law of Migrant Smuggling*. Cambridge University Press. <https://www.cambridge.org/core/books/international-law-of-migrant-smuggling/E34F734A27640654F3477A1B7D8B9C98>

53 A range of individual states' relevant legislation can be found at: UNODC - *Smuggling of Migrants Knowledge Portal - Database of Legislation*. <https://sherloc.unodc.org/cld/v3/som/legdb/index.html?lng=en>

“States address migrant smuggling through their national legislation in various ways, often conflating this crime with the facilitation of illegal entry, and less regularly addressing it as a form of transnational organized crime. The prosecution of migrant smuggling cases remains little documented at the international level.<sup>54</sup>”

### Worth the risk?

Most OECD countries have clear legislation against migrant smuggling, but smugglers are rarely apprehended in these states as they tend to take care to curtail their association with their clients just short of OECD territory. The exception to this has been in Europe in 2014–2016, where smuggling events took place in a wide range of geographic fronts involving more than two million smuggled irregular migrants across the continent. Thousands of arrests and convictions of smugglers have occurred in Europe, but hundreds of court cases remain pending and actual convictions are rare.<sup>55</sup> A smuggler looking at the low number of custodial convictions or fines for smuggling in Europe and elsewhere would justifiably conclude the business model remains one of high reward/low risk.<sup>56</sup>

### Pervasive corruption

Convictions for migrant smuggling offences outside OECD countries are also rare and penalties often derisory.<sup>57</sup> In many origin and transit countries where smugglers operate, the rule of law and the judiciary can easily be corrupted, and enforcement units, apart from being potentially corrupt themselves, may also not be convinced that a real crime is taking place, given the apparent consent between the smugglers and the smuggled.

Drug trafficking and migrant smuggling differ in that censure against drugs tends to take place within the criminal justice system whereas authorities often treat migrant smuggling as an administrative infringement, such as a violation of immigration rules.<sup>58</sup> In places where migrant smuggling tends to be confused and conflated

with human trafficking there have been a few cases of smugglers receiving excessively harsh sentences more appropriate to human trafficking. Often it is smuggled migrants themselves who are criminalized and detained, fined and sometimes sentenced. The level of detention of migrants often in unacceptable conditions and without adequate legal representation, including those considered minors, is at its highest levels.<sup>59</sup>

### Insufficient political will

In relation to legal censure, the issue of political will and capacity needs to be taken into account. Many countries where violations (of both migrant smuggling and drugs legislation) occur have limited political will or capacity to pursue cases. Even in the global North there may be a reluctance to sentence too many culprits when the prisons are already full, and the courts overwhelmed. The costs of securing convictions, especially in the North are also high. (On the other hand, some more zealous jurisdictions have used anti-smuggling law to prosecute members of the public accused of facilitating irregular movement by providing shelter or transport).<sup>60</sup>

In so far that there are a high number of offences relating to drugs and migrant smuggling that occur in countries with weak and/or corruptible institutions and venal state officials, there are similarities between the two activities. But, concerning legal censure of the two activities the differences are stark, although as subsequent sections will show, both activities flourish whatever the level of legal censure.

## 2.7: Limits to interdiction

Interdicting migrant smugglers is problematic. Those most interested in interdiction and the arrest of smugglers (destination countries) normally have jurisdiction issues unless the smugglers operate in their own territory. In cases where smugglers travel with migrants they look and dress in a similar manner to their clients, may be of the same nationality and so any force or violence used to apprehend a suspected smuggler runs the risk of harming those being smuggled. Smugglers also often use remote routes in hostile locations along highly permeable borders

54 UNODC (2016) UNODC launches global database of migrant smuggling cases. <https://www.unodc.org/unodc/en/human-trafficking/Webstories2016/global-database-of-migrant-smuggling-cases.html>

55 UNODC - Smuggling of Migrants Knowledge Portal - Case Law Database. <https://sherloc.unodc.org/cld/v3/som/cldb/index.html?lng=en>; Some examples of the dozens of media articles on the arrest of smugglers: <http://www.express.co.uk/news/world/731331/Po-lice-smash-gang-smuggling-thousands-illegal-immigrants-Britain>; <http://frontex.europa.eu/pressroom/news/german-helicopter-deployed-by-frontex-helped-in-arrest-of-suspected-drug-smugglers-W5DvIL>; <https://www.europol.europa.eu/newsroom/news/arrests-and-house-searches-against-people-smuggler-ring-in-germany>; <http://www.independent.co.uk/news/world/europe/migrant-crisis-twenty-somalis-convicted-in-italy-of-smuggling-people-into-northern-europe-10208447.html>

56 Europol (2018) All you need to know about migrant smuggling in the EU. <https://www.europol.europa.eu/newsroom/news/all-you-need-to-know-about-migrant-smuggling-in-eu>

57 UNODC - Case Law Database. op. cit.

58 For example, in Austria, all 63 prosecutions of migrant smuggling logged by UNODC involved civil rather than criminal courts: [https://sherloc.unodc.org/cld/v3/som/cldb/search.html?lng=en#c=%7B%22filters%22:%5B%7B%22fieldName%22:%22en%23caseLaw@country\\_la-bel\\_s%22,%22value%22:%22Austria%22%7D%5D%7D](https://sherloc.unodc.org/cld/v3/som/cldb/search.html?lng=en#c=%7B%22filters%22:%5B%7B%22fieldName%22:%22en%23caseLaw@country_la-bel_s%22,%22value%22:%22Austria%22%7D%5D%7D).

59 The Global Detention Project (<https://www.globaldetentionproject.org/>) offers analysis on numbers of detained migrants including minors by country.

60 UNODC - Case Law Database. op. cit. Select 'France' and 'Italy' for several examples.

that may stretch for hundreds or thousands of kilometres and which are therefore impossible to effectively police. In its attempts to apprehend armed smugglers on the Mediterranean, for example, Frontex has sometimes been forced to let smugglers go rather than risk harming migrants through an exchange of fire with smugglers.<sup>61</sup> Also, in most cases smugglers are not with their migrant clients at the point of contact with authorities in locations with effective and non-bribeable border management or sea patrols precisely in order to avoid detection and arrest.

### Rights and obligations

Interdiction is also problematic because of human rights-based regulations and norms that often oblige authorities intercepting a group of smuggled people to take charge, look after and ascertain the legal status of those they find – some will be asylum seekers and/or refugees. While smugglers slip away, if there at all, the authorities remain with thousands of migrants from another country who need medical attention, legal representation and processing. Countries throughout Africa, Asia and Europe are currently holding hundreds of thousands of migrants pending determination of status, sentencing, deportation or voluntary return.<sup>62</sup>

Interdiction of drug trafficking faces different problems. Since they deal with inanimate cargo, anti-drugs units can conduct armed interventions with less fear of collateral harm, even if civilians, particularly in urban settings, do sometimes get caught up in such operations.<sup>63</sup> Production and transportation also frequently occur in remote locations such as jungles and using small aircraft that may be difficult to detect, or innovative fast or submerged vessels using technology that may be more advanced than those combatting crime have access to. As discussed, the capacity to conceal large quantities of drugs and suborn widespread collusion is a huge enabler for drugs traffickers.

### Deterrence deficit

A reality concerning drug interdiction is that the level of successful interdiction would need to be far higher to work as an effective deterrent.<sup>64</sup> The same is true for migrant smuggling. In both activities the profit margins are super-charged so the level of disruption (leading to loss of earnings) would need to rise many-fold, beyond the point their markets would accept the increases, before the activities become non-viable economically. Some argue against robust interdiction of migrant smugglers on the grounds that it not only results in

higher costs for already poor and vulnerable people, but also that, as movement is forced further underground, it is potentially more dangerous for those on the move. Those arguing against the war on drugs and the war on migrant smugglers have suggested that a vicious circle is created in both business models by the very illegality of the activities, which gives traders such high profits and an incentive to stay in business.

## 2.8: Impunity

Notwithstanding legal and social censure and the number of arrests for drug-related crimes and (to a far lesser extent) migrant smuggling, both activities operate in a highly permissive context characterized by a generalized *de facto* impunity. Clearly there is no *de jure* impunity, especially with respect to drugs, but the ground realities are quite different. This is true for migrant smuggling as much as for drugs trafficking, where in many contexts the local authorities know quite well who the perpetrators are and how and where they operate.

### No fear of punishment

Within a culture of impunity and weak rule of law implementation, there is little to restrict the crimes. Furthermore, evidence suggests that perpetrators are so sure of the absence of reprimand, retribution or punishment that they frequently conduct their violations – including murder – in front of witnesses and in broad daylight. Those responsible for deaths of migrants in the Sahara, for overloading vessels with migrants on the Libyan coast, and for drownings in the Gulf of Aden, are a relatively small group who continue to operate year in year out in the same locations. They are known to local people and often to the migrants and other smugglers, yet they continue uninterrupted or challenged.

Between 2017/18, the Mixed Migration Centre's vast 4Mi survey<sup>65</sup> found that globally, along seven separate migratory routes, of 10,042 refugees and migrants interviewed, 937 reported that they had witnessed deaths or killings along the way, often multiple fatalities in a single reported incident. Additionally, in a thirty-month period between 2015 and 2017 the survey found that approximately 3,560 migrants from the Horn of Africa interviewed along different routes and in different

61 The Maritime Executive (2015) *Smugglers Fire Shots in Migrant Rescue Operation*. <https://www.maritime-executive.com/article/smugglers-fire-shots-in-migrant-rescue-operation>

62 The Global Detention Project attempts to chart this. <https://www.globaldetentionproject.org/category/publications/country-detention-reports>

63 Boyd, G. (2002) *Collateral Damage in the War on Drugs*. American Civil Liberties Union. <https://www.aclu.org/other/collateral-damage-war-drugs>; Delano, J. (2018) *Fruits of Impunity: Collateral Damage in Duterte's War on Drugs*. *L'Espresso Magazine*. Available in English translation at: <http://pulitzercenter.org/reporting/fruits-impunity-collateral-damage-dutertes-war-drugs>

64 UNODC (2018 b) op. cit.: 'Both the range of drugs and drug markets are expanding as never before.'

65 For more information on migrant deaths see: UNODC (2018a) op. cit.



locations said they had witnessed 2,522 migrant deaths.<sup>66</sup>

The same migrants identified the perpetrators as predominantly smugglers (52%) followed by police (27%).<sup>67</sup> 4Mi data between 2015 and 2017 also showed that sexual abuse was commonly experienced and witnessed: of the 3,400 interviewed on these issues, 1,346 said they experienced or witnessed sexual abuse. Some 455 interviewees experienced the abuse themselves. In total (witnessed and experienced) this involves 778 cases of rape. Ninety percent of the victims were female.<sup>68</sup>

### Smugglers respected

As mentioned, smugglers are also often well-known and easily identified within their own local communities and live without challenge or disapproval. Often on the contrary, they are admired for their wealth and respected for facilitating movement. There is a dissimilarity here with drugs cartels and their soldiers, who may swagger about with respect born of fear and whose immunity is obtained by their guns and their manipulation and control of the law enforcement apparatus. They commit crimes against state officials, civilians and rival gang members, often with eye witnesses present.

Indeed, this paper would argue that in most cases migrant smugglers are also well known to state officials, law enforcement or border authorities, who in many cases share in the smugglers profits. In this there is a growing similarity with the drug trafficking industry where the collusion and corruption of state officials – from top to bottom – is an undisputed and long-established characteristic of the trade. This aspect of the drugs trade suggests it is deeply embedded in certain communities and would be resistant to change. So too, in many areas where migrant smuggling takes place, state officials collude and cooperate with smugglers to such a degree that change will be impossible unless these characteristics are addressed.

“I don't have the words to explain about human right abuse in Sudan. Because the government officials are directly involved in the criminal work They are working with the smuggling men and receive bribes and raping woman migrant. And also they are responsible for those who were kidnapped and disappeared.”

(Ethiopian migrant, 25. Interviewed in Egypt).

“The Eritrea border guards caught us while crossing the border from forto-sawa. They beat us brutally, and raped us. They then sold us to Rashaida men traffickers the next day.”

(Eritrean female migrant, 18. Interviewed in Egypt)<sup>69</sup>

### Needy commodities

Being inanimate, drugs have no volition of will, but migrant smugglers profit from the strong will of migrants and refugees to meet their desire to move. The driving aspirations and will of migrants make humans awkward and needy commodities for smugglers when compared to drugs, but also makes them increasingly susceptible to remaining in the thrall of smugglers, despite frequently experiencing severe violations, negligence and deception. While drug traffickers have always used weapons to protect themselves and their cargo during transportation, migrants are only recently reporting that their smugglers are moderately armed (mostly with knives and clubs, sometimes firearms) to control their clients and enforce discipline. Various reports primarily drawn from migrant testimonies show that smugglers also may use weapons to defend themselves against other gangs or competitors as well as to keep away law enforcers they are unable to bribe or with whom they are unwilling to share their profits.<sup>70</sup>

66 A smaller number reported incidents but, in some cases, there were multiple fatalities witnessed. 4Mi no longer reports findings in this way due to the possibility of double counting, with different refugees and migrants reporting the same incident.

67 4Mi data and quoted in: IOM (2017) op. cit.

68 4Mi data

69 Quotes from 4Mi interviews

70 Campana, P. (2018) Out of Africa: The organization of migrant smuggling across the Mediterranean. European Journal of Criminology. <https://journals.sagepub.com/doi/abs/10.1177/1477370817749179>

**Photo credit:** Yannis Kontos / Polaris / Panos.  
Nangarhar province, AFGHANISTAN (2002)

Poppy farmer Mangal Khan works in his field in the Samarkhail district of Jalalabad. During the 1990s, opium, and by extension, heroin, became the chief source of income for Afghanistan, growing more than 70 percent of the world's supply. In 2000, the ruling Taliban banned poppy growth and production fell to almost nothing. Since the US-led war against the Taliban, however, farmers quickly replanted the opium-bearing flowers and in recent years record harvests have been reported. According to reports from the United Nations Office on Drugs and Crime (UNODC), despite repeated interdiction and eradication campaigns opium poppy cultivation in Afghanistan reached a record-high in 2017/18, leading to unprecedented levels of heroin on the world market.



# Section 3: Lessons learnt

## 3.1: Use of prohibition as a deterrent

### Illicit drugs

As outlined in Section 3, internationally, and nationally, there is a high level of consensus concerning the outlawing of all aspects of the production, sale, distribution and use of most psychoactive drugs. Well over 200 narcotic drugs and psychotropic substances are currently under international control,<sup>1</sup> although the bulk of trafficking involves only a few of these. Most countries enforce strict laws (some of them providing for capital punishment) around controlled drugs – as evidenced by the large proportion of drug offenders in prison populations around the world – and yet the appetite for recreational drugs continues to be high and is rising:

We are facing a potential supply-driven expansion of drug markets, with production of opium and manufacture of cocaine at the highest levels ever recorded. Markets for cocaine and methamphetamine are extending beyond their usual regions and, while drug trafficking online using the darknet continues to represent only a fraction of drug trafficking as a whole, it continues to grow rapidly, despite successes in shutting down popular trading platforms.<sup>2</sup>

### 'Legal highs'

Adding to the challenge facing lawmakers and law enforcers, new drugs are being created in efforts to circumvent existing restrictions: in 2013 the European Monitoring Centre for Drugs and Drug Addiction reported that there were 280 new drugs known as 'legal highs' available in Europe.<sup>3</sup> An estimated 73 new psychoactive synthetic drugs appeared on the UK market in 2012 alone, many sold online and increasingly difficult for lawmakers to keep up with.<sup>4</sup>

According to UNODC, 'about 275 million people worldwide, which is roughly 5.6 per cent of the global population aged 15–64 years, used drugs at least once during 2016.' Drug use is harmful to the point of requiring treatment for 31 million people across the world; in 2015, 168,000 deaths across the world were directly attributable to the use of drugs.<sup>5</sup>

### Migrant smuggling

Although legislation designed to combat migrant smuggling<sup>6</sup> is newer and in many places less harsh and less strictly enforced than that against drugs, there are few signs that the laws are successful in curtailing the phenomenon. Despite arrests in Europe, Asia and the Americas, in recent years the smuggling market has expanded hugely, and now seems to be irresistible to entrepreneurial and opportunistic smugglers as well as more structured criminal networks.

There is evidence that, at a minimum, 2.5 million migrants were smuggled for an economic return of US\$5.5-7 billion in 2016. This is equivalent to what the United States of America (some US\$7 billion) or the European Union countries (some US\$6 billion) spent on humanitarian aid globally in 2016. This is a minimum figure as it represents only the known portion of this crime.<sup>7</sup>

### Impact of restrictions

For both drugs and migrant smuggling, conventional economics suggests that the more extensive the legal restrictions are the more smugglers and traffickers can charge for their services.

But with migrant smuggling, prohibition may not be taken seriously enough to affect prices or demand on many routes. Accurate assessment is problematic as sudden increases in the numbers of people requesting smuggler services and the number of available smugglers can also considerably reduce the price, as seen in Libya and Turkey during 2016 where the cost of journeys by sea fell sharply.<sup>8</sup>

1 See: INCB (2018) *Yellow List - List of Narcotic Drugs Under International Control* <https://www.incb.org/incb/en/narcotic-drugs/Yellowlist/yellow-list.html>; and INCB (2018) *Green List - List of Psychotropic Substances Under International Control*. <https://www.incb.org/incb/en/psychotropics/green-list.html>

2 UNODC (2018b) op. cit.

3 Power, M. (2013) *Rise in legal highs is fuelled by drug prohibition*. The Guardian. <https://www.theguardian.com/commentisfree/2013/may/29/drug-prohibition-rise-legal-highs>

4 Travis, A. (2013) *Two new 'legal highs' to be banned for 12 months*. The Guardian. <https://www.theguardian.com/society/2013/jun/04/legal-highs-benzo-fury-nbome-banned>

5 UNODC (2018b) op. cit.

6 A selection of such national laws can be found at: UNODC - Database of legislation. op. cit.

7 UNODC (2018b) op. cit.

8 Tinti & Reitano op. cit.

Where there are major obstacles to their business models, drug traffickers and human smugglers alike may change the way they operate and alter their routes, but generally they remain in their country or region.<sup>9</sup> Exceptions are more common in drug trafficking than migrant smuggling.<sup>10</sup>

## Lessons learnt: 1

### Use of prohibition as a deterrent

*The demand and supply of illicit drugs is evidently not reduced by prohibitive laws. But prohibitive laws keep prices high, making the trade more attractive to criminals and less easy for them to give it up. Despite more and more substances coming under legal control and although prisons are crowded with drug-offenders, the demand for recreational drugs increases in volume and geographic spread.*

*So far, migrant smuggling legislation is having little or no impact on the flows of irregular migrants being organised and guided by smugglers. It is not clear how many people are in prison for migrant smuggling offences globally<sup>11</sup> but the number is negligible compared with those jailed for drug offences. Neither is it clear whether laws have any deterrent effect on migrant smuggling. In many countries legal frameworks and implementation are weak and even where this is not the case punishments are often light, frequently only involving fines.<sup>12</sup>*

*As with drug trafficking, as long as migrant smuggling profits are high (and pushed higher by restrictions and legal censure) the illegality of smuggling will deter few. As demand for smugglers (i.e. the compulsion or aspiration to migrate irregularly in the absence of adequate legal means) grows, the sector will likely flourish, irrespective of any new tough criminal laws or harsh sentencing policies for those convicted.*

## 3.2: Use of interdiction as a deterrent

### Illicit drugs

Over the past three decades, US counter-narcotics efforts abroad have strongly emphasised eradication of illicit crops, interdiction of drug flows and dismantling of drug trafficking organisations (DTOs). The wisdom of this emphasis has been widely challenged:

*“At the core of these policies lay the assumption that such drug suppression policies not only accomplished the key US objective of reducing US drug consumption by reducing the volume of drug flows into the United States, but also fostered other crucial US goals of weakening, if not outright defeating, terrorist and militant groups involved in the drug trade. Yet the cumulative evidence of the outcomes of these policies over the past three decades has proven these basic assumptions of US counter-narcotics policies to be misplaced. Forced eradication, unfocused interdiction and nonstrategic break-up of DTOs – policies often exported and force-fed to supply-side and transshipment countries – came with a host of negative side-effects. These include: extensive human rights violations; further political, economic and social marginalisation of illicit crop farmers; destabilisation of local governments; alienation of local populations; strengthening of bonds between militant groups and local populations; and increases in violence perpetrated by DTOs and other criminal groups.<sup>13</sup>”*

9 Dalkiran, M. & Alexandridis, A. (2017) Routes Change, Migration Persists: The Effects of EU Policy on Migratory Routes. Alsharq Forum. <http://sharqforum.org/2017/03/28/routes-change-migration-persists-the-effects-of-eu-policy-on-migratory-routes/>

10 Csete, J. (2016) The economics of the drug war: unaccounted costs, lost lives, missed opportunities. Open Society Foundations. [https://www.unodc.org/documents/ungass2016/Contributions/Civil/OpenSociety/The\\_Economics\\_of\\_the\\_Drug\\_War\\_-\\_Unaccounted\\_Costs\\_Lost\\_Lives\\_Missed\\_Opportunities.pdf](https://www.unodc.org/documents/ungass2016/Contributions/Civil/OpenSociety/The_Economics_of_the_Drug_War_-_Unaccounted_Costs_Lost_Lives_Missed_Opportunities.pdf). In 2012 UNODC reported that Mexico's principal drug trafficking organizations had moved 90 percent of their US-destined cocaine trafficking operations to Central America: UNODC (2012) *Transnational organised crime in Central America and the Caribbean - A Threat Assessment*. [https://www.unodc.org/documents/data-and-analysis/Studies/TOC\\_Central\\_America\\_and\\_the\\_Caribbean\\_english.pdf](https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf)

11 UNODC's Case law database (op. cit.) summarizes hundreds of judicial proceedings in 43 countries across the world, but it is not exhaustive nor fully up to date.

12 Ibid.

13 Felbab-Brown, V. (2014) *Improving Supply-Side Policies: Smarter Eradication, Interdiction and Alternative Livelihoods – and the Possibility of Licensing*. LSE Expert Group on the Economics of Drug Policy. <https://www.brookings.edu/research/improving-supply-side-policies-smarter-eradication-interdiction-and-alternative-livelihoods-and-the-possibility-of-licensing/>; see also: Global Commission on Drug Policy (2013) *The Negative Impact of the War on Drugs on Public Health: The Hidden Hepatitis C Epidemic*. <http://www.globalcommissionondrugs.org/reports/the-negative-impact-of-the-war-on-drugs-on-public-health-the-hidden-hepatitis-c-epidemic/>

Many countries, whether drug producers or consumers (or both), devote significant resources to eradicating crops, disrupting gangs and interdicting supply. The direct costs of policing and interdicting drug supply include not just ordinary policing but extensive military and paramilitary operations. Mexico, Peru, Colombia, Venezuela, Afghanistan and Myanmar offer strong and differing examples. Specialised narcotics-interdicting police and military units involving hundreds of thousands of men and women are active every day throughout the world. They operate often with dramatic effect – there are frequent victories involving arrests and large seizures – but overall, they have minor impact.

### Cannabis still most popular drug

According to UNODC data,<sup>14</sup> during the period 2010-2016, the most widely cultivated drug crop continued to be cannabis, which was reported by 145 countries. It is also the most widely consumed drug in the world. The global area under opium poppy production in 2017 was up 37 percent from the previous year, to reach almost 418,000 hectares, with Afghanistan accounting for some 86 percent of production. A record 10,500 tonnes of opium were produced in 2017, a 120 percent increase over output in 2015. The area under coca bush cultivation (almost all in Bolivia, Colombia and Peru), having plummeted by 45 percent between 2000 and 2013, soared by 76 percent between 2013 and 2016, to reach 213,000 hectares. The products from these crops and the plethora of more synthetic substances are, to some extent, available and consumed in every country in the world.

Every year, hundreds of thousands of people across the world are arrested and prosecuted, then, if convicted, fined or detained for non-violent drugs-related offenses, all at great cost to national budgets.

### Interdiction is expensive

In 2012, one global annual estimate of economic costs related to interdiction was \$100 billion.<sup>15</sup> The United States alone – arguably the biggest contributor to global drug control expenditures – had a federal drug control budget in fiscal year (FY)<sup>16</sup> 2018 of about \$27.8 billion.<sup>17</sup> An **additional** \$25 billion are spent at the state and city-level every year.<sup>18</sup>

Where interdiction has been successful in disrupting specific elements of the drug trade, the net impact has not been a long-term reduction of production or trafficking but adaptation, making interdiction that much harder in the future. A good example of this was when Colombia shifted to more interdiction and less crop eradication after 2007. As a result, coca production rose in Peru and Bolivia, cocaine processing facilities moved to Venezuela and Ecuador, and the bases of operation of drug traffickers were displaced to Mexico and Central America.<sup>19</sup>

The epidemic of violence that was unleashed in Mexico was due partly to the decision of the Calderón government to use the army to fight drug traffickers, but also to the displacement of the bases of trafficking networks from Colombia to Mexico. 'The dramatic increase in homicides in Mexico then, was an unforeseen and unimaginably high cost of the pursuit of drug prohibition on several fronts.'<sup>20</sup> Elsewhere, by mid-2017 some analyses were citing the impact of Philippines' recent ferocious war on drugs (traffickers and users) as pushing the dealers into Indonesia.<sup>21</sup>

### Migrant smuggling

In most countries, the interdiction of migrant smuggling forms part of broader border security and immigration management efforts. Specific interdiction operations and their costs are therefore hard to evaluate or quantify. While some police forces have specialist anti-trafficking teams and task forces, there are few dedicated, specialist groups tasked to interdict migrant smugglers as their sole or primary objective. In specific locations, such as the US-Mexican border and the territorial waters of Australia, where there are dedicated resources focused on preventing irregular migration, migrant smugglers have been detained as a means to that end. In the case of Australia, sending boats back out to sea has been the chosen method of interdiction, rather than arrests and incarcerations – always legally problematic and politically controversial for the government. As a later section of this paper will illustrate, with regard to its stated objectives of preventing smuggler-organised irregular maritime arrivals, Australia's 'stop the boats' policy has been remarkably successful.

14 UNODC (2018b) op. cit.

15 Rolles, S. et al (2012) *The Alternative World Drug Report - Counting the Costs of the War on Drugs*. Transform Drug Policy Foundation. <http://countthecosts.org/sites/default/files/AWDR.pdf>

16 In the US, the fiscal year, which is used for government statistics, runs from October 1 to September 30.

17 Executive Office of the US President (2017) - *National Drug Control Budget - FY 2018 Funding Highlights*. [https://www.whitehouse.gov/sites/whitehouse.gov/files/ondcp/Fact\\_Sheets/FY2018-Budget-Highlights.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/ondcp/Fact_Sheets/FY2018-Budget-Highlights.pdf). The budgeted funds were destined for 'drug control efforts spanning prevention, treatment, interdiction, international operations, and law enforcement across 14 Executive Branch departments, the Federal Judiciary, and the District of Columbia'.

18 Drug Policy Alliance (2015) *The Federal Drug Control Budget - New Rhetoric, Same Failed Drug War*. [https://www.drugpolicy.org/sites/default/files/DPA\\_Fact\\_sheet\\_Drug\\_War\\_Budget\\_Feb2015.pdf](https://www.drugpolicy.org/sites/default/files/DPA_Fact_sheet_Drug_War_Budget_Feb2015.pdf)

19 Mejía, D. & Csete, J. op. cit.

20 Csete, J. op. cit.

21 Hawley, S. (2017) *Rodrigo Duterte pushing Philippines' drugs market to Indonesia, anti-narcotics chief says*. <http://www.abc.net.au/news/2017-07-26/indonesias-anti-narcotics-chief-on-philippines-drug-killings/8742818>

## Operation Sophia

The European Union Naval Force in the Mediterranean (EUNAVFOR MED) – also known as Operation Sophia (and explored in further detail in Section 4) – is unusual insofar that the top two elements of its mandate are:

“...to undertake systematic efforts to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers, in order to contribute to wider EU efforts to disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean and prevent the further loss of life at sea.”<sup>22</sup> (Emphasis added.)

This combination of interdiction and life-saving reflects the ambivalence and complexity of dealing with an illicit business involving humans – consisting as it does of the transport of men, women and children, who are often escaping persecution and war – rather than controlled inanimate substances. Established in 2015, Operation Sophia currently has four naval units and six air assets and is supported by 26 EU member states.<sup>23</sup>

In late November 2018, Operation Sophia reported that since its inception it had: apprehended 151 suspected smugglers and traffickers and delivered them to Italian prosecuting authorities; prevented 551 boats from being re-used by smugglers; and rescued some 45,000 people at sea.<sup>24</sup>

In October 2016 Operation Sophia started carrying out two additional tasks: training Libya's Navy and Navy Coast Guard<sup>25</sup> and implementing an arms embargo off the coast of Libya under UN Security Council Resolution 2292 (2016).

## Uncounted costs

There are no global estimates on resources used to interdict migrant smuggling. One analysis published in 2016 illustrates the difficulty of identifying dedicated anti-smuggling activities and costs: concerning the European Union it stated, 'since 2014, at least €17 billion has been spent on deterring refugees and migrants through tighter border controls and bilateral agreements, such as the EU-Turkey deal. These measures have been effective in reducing flows.'<sup>26</sup> Clearly there are some specific anti-smuggling expenditures in these expenditures, but they are virtually impossible to separate from the combined costs.

However, while global irregular migration thrives as migrant smuggling becomes more entrenched there is evidence that interdiction through border management and control, supported by physical barriers, can have undeniable and significant impact on irregular flows along specific routes. This does not necessarily mean that migrant smugglers are being successfully interdicted in significant numbers, and nor does it prevent smugglers and migrants trying to reach other destinations through other means. This assessment does not attempt to judge the ethics of these measures but only comments on the impact. Some examples illustrate this:

- **Australia** has since 2013 applied stricter anti-irregular maritime migration policies along its coast (under Operation Sovereign Borders and its 'stop the boats' component). The flows arriving in Australia (from Afghanistan, Bangladesh, Myanmar, India, Iran and the Horn of Africa) by sea have been reduced from over 40,000 in 2012/3<sup>27</sup> to virtually zero between 2016 and 2018, despite a sharp increase in overall flows out of Afghanistan after violence there intensified in 2015.<sup>28</sup> After the start of Operation Sovereign Borders, flows of Afghan migrants to Europe and Malaysia rose significantly. With Australia's funding and encouragement – aimed at

22 For further mandate details see the mission's website: <https://www.operationsophia.eu/about-us/>

23 See UENAVFOR MED website: [https://eeas.europa.eu/csdp-missions-operations/eunavfor-med-operation-sophia\\_en](https://eeas.europa.eu/csdp-missions-operations/eunavfor-med-operation-sophia_en)

24 Email update from Operation Sophia spokesperson. These figures have not risen since those published in July 2018, most likely a result of Libya's crackdown on migrants (see: Lewis, A. & Laessing, U. (2018) Migrant flows slow to trickle in Libyan former smuggling hub. Reuters. <https://uk.reuters.com/article/uk-europe-migrants-libya/migrant-flows-slow-to-trickle-in-libyan-former-smuggling-hub-idUKKCN1NW0IQ>)

25 This collaboration has proven highly controversial because of the Coast Guard's abuses. For details, see: UN Security Council (2017) *Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011)*. <https://reliefweb.int/report/libya/final-report-panel-experts-libya-established-pursuant-resolution-1973-2011-s2017466>. This found that 'smugglers, as well as the [Libyan] Department of Counter Illegal Migration and the coastguard, are directly involved in ... grave human rights violations.'; Amnesty International (2017a) *Libya's Dark Web of Collusion: Abuses Against Europe-Bound Refugees and Migrants*. <https://www.amnesty.org/download/Documents/MDE1975612017ENGLISH.PDF>; UNSML & OHCHR (2016) *Detained and dehumanised, Report on human rights abuses against migrants in Libya*. [https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised\\_en.pdf](https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf)

26 Cosgrave, J. et al (2016) *Europe's Refugees and Migrants: hidden flows, tightened borders and spiralling costs*. Overseas Development Institute. <https://www.odi.org/publications/10558-europe-s-refugees-and-migrants-hidden-flows-tightened-borders-and-spiralling-costs>

27 Statistics were sourced from unpublished data from the Australian Department of Immigration and Border Protection provided by the Irregular Migration Research and Analysis Section of the Australian Government.

28 IOM (2016) *Migration Flows from Afghanistan and Pakistan Towards Europe - Understanding Data-Gaps and Recommendations*. <https://displacement.iom.int/reports/afghanistan-%E2%80%94-migration-flows-afghanistan-and-pakistan-europe-desk-review-report-august-2017>

reducing onward flows to its shores – **Indonesia** has replicated Australia’s tough stance against irregular migration, including by pushing boats back out to sea, criminalising refugees and detaining migrants.<sup>29</sup>

- Border fences around the two Spanish enclaves of **Melilla** and **Ceuta** along the North African Mediterranean coast in Morocco, have reduced numbers of irregular migrants entering Spain and therefore Europe. Earlier fences (since 1993) proved too easy to cross. By 2005 a new system was introduced with fences raised from three to six metres and topped with barbed wire, with regular watch-posts and a road running between parallel fences to accommodate police patrols or ambulances in case of need. Underground cables connect spotlights, noise and movement sensors, and video cameras to a central control booth; dozens of coast guard ships and patrol boats check the coast, involving hundreds of *Guardia Civil* officers and police. Despite some success by migrants who from time to time storm the fences *en masse*, these measures are comparatively successful in preventing irregular migration accessing Europe at those particular points. Again, as these borders become less accessible it should be assumed migrants try others. Interestingly, in this case, once migrants have made their way to areas close to these enclaves (often using smugglers) there is no evidence of smugglers assisting or facilitating their forced entry.
- **Israel's** terrestrial fence along its border with Egypt was started in 2012 and completed in 2013. It is estimated that between 2006 and 2012 close to 40,000 Eritreans arrived in Israel, passing through Egypt’s Sinai Peninsula, (often facing severe rights violations including murder there).<sup>30</sup> Stringent Israeli immigration and border control measures have reduced this number to almost zero. As a result, the route through Libya and a lesser extent through Egypt (and onwards to Europe), has become increasingly popular with Eritreans, despite the high costs and risks they face along these new ‘western routes’.

- In 2016, new fences and more robust patrolling of **Macedonia’s** border with Greece (which Macedonia, having previously used tear gas and stun grenades to drive back refugees and migrants,<sup>31</sup> closed in March 2016), **Hungary’s** border with Serbia, and **Estonia’s** border with Russia did much to frustrate flows of migrants and refugees hoping to transit these countries towards their preferred destinations (*inter alia*, Germany, UK, Scandinavia). These measures have been successful in sharply reducing flows into Macedonia, Hungary and Estonia<sup>32</sup> but have not necessarily reduced overall migration or migrant smuggling into Europe. Arguably they have just raised the costs and the dangers for those using smugglers to find a way round or through these restrictions and added to the misery of those who feel stuck and merely wait in centres in Greece, for example, for a time when they can move on to their preferred destinations.
- The March 2016 **EU-Turkey Statement**, (examined in greater depth below), whereby Turkey no longer permitted migrants and refugees to use its coast as departure points for Greece, combined with Greece’s restriction of migrants boarding ferries from the islands to mainland Greece, had a dramatic effect on numbers reaching Europe.<sup>33</sup> Despite the controversy around the deal,<sup>34</sup> almost immediately the numbers on the move and attempting to move decreased sharply, illustrating again that interdiction measures work, even if they are clearly targeting the refugees and migrants themselves rather than smugglers. It could be argued that the smugglers’ business models are disrupted because of government policies against migrants and not the other way around.

### Migrants take the brunt

The examples above illustrate that despite its public emphasis on targeting migrant **smugglers**, Europe’s policies and actions tend to have a greater interdiction impact on migrants themselves, especially those in irregular flows. Equally, Australia’s policies are aimed at stemming irregular and smuggler-instigated flows:<sup>35</sup> Australia has little interest in arresting and imprisoning foreign smugglers working outside of its territorial

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29 Hargrave, K. & Pantuliano, S. (2016) *Closing borders - The ripple effects of Australian and European refugee policy*. Overseas Development Institute Humanitarian Policy Group / International Center For Humanitarian Affairs. <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10868.pdf>; See also: Nethery, A., Rafferty-Brown, B. & Taylor, S. (2012) Exporting Detention: Australia-Funded Immigration Detention in Indonesia. *Journal of Refugee Studies*, <https://academic.oup.com/jrs/article/26/1/88/1562063>.

30 Frouws, B. (2015) *Going West - Contemporary mixed migration trends from the Horn of Africa to Libya & Europe*. RMMS. [http://www.mixedmigration.org/wp-content/uploads/2018/05/008\\_going-west.pdf](http://www.mixedmigration.org/wp-content/uploads/2018/05/008_going-west.pdf)

31 Fatos Bytyci, F. & Grulovic, F. (2015) *With tear gas and razor wire, Macedonia tries to stem refugee tide*. Reuters. <https://uk.reuters.com/article/uk-europe-migrants-macedonia/with-tear-gas-and-razor-wire-macedonia-tries-to-stem-refugee-tide-idUKKCN0QQ0M120150821>

32 IOM (2017) *Migration Flows to Europe - 2017 Quarterly Overview - March*. Displacement Tracking Matrix. [http://migration.iom.int/docs/Q1\\_2017\\_statistical\\_Overview.pdf](http://migration.iom.int/docs/Q1_2017_statistical_Overview.pdf)

33 The text of the EU-Turkey Statement and Action Plan can be found at: <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan>

34 Refugees Deeply (2018) *Expert Views: The EU-Turkey Deal After Two Years*. <https://www.newsdeeply.com/refugees/community/2018/03/20/expert-views-the-e-u-turkey-deal-after-two-years>

35 While Australia is strict on irregular maritime arrivals it has one of the largest refugee resettlement programmes globally and has the highest proportion of permanent regular migrants amongst its population of any country worldwide.

jurisdiction. However, despite a rapid surge in border control, fence-building and other measures throughout Europe in the last three years, and a sharp drop in the number of irregular arrivals,<sup>36</sup> tens of thousands continue to reach Europe either by land or sea through recorded and unrecorded means (clandestinely).<sup>37</sup>

The 3,200-kilometre **US-Mexican** border – the most irregularly crossed frontier in the world – offers a stark example of where restrictions have failed to significantly stem flows. Despite extensive restrictive border management strategies and the deportation of millions of irregular migrants every year, the US has failed to stop hundreds of thousands of irregular migrants coming into the US. There's no official measure of total illegal crossings at the US/Mexican border; authorities use the number of apprehensions to track trends. Apprehensions on the Southwest border have steadily declined from 1.64 million in FY2000 to 304,000 in FY2017. But the composition of those arriving is changing: there are fewer Mexicans proportionally, as more migrants from Central America join the flows, and more family groups (24% of total apprehensions in FY2017) and unaccompanied minors (40,000 apprehensions in FY2017). Despite interdiction efforts, in budgetary and practical terms it is easy to see how over 3,000 kilometres of border will always defy efforts to end irregular migration and the human smugglers that assist and abuse them. Saudi Arabia faces a similar challenge with its border with Yemen.

### The balloon effect

It appears that as long as border restrictions and interdiction activities are not comprehensive and/or continuous, they will only force a displacement of routes and methods as smugglers and migrants adapt – the so-called balloon effect. The evidence therefore suggests that while localised interdiction of migrant smuggling (irregular migration) may be successfully if fully engaged, when the efforts are partial or insufficient, they will have little effect and often come at high human and financial cost. Assuming the root causes and demand for mobility continue, migrant smugglers will continue to be in demand and seek alternative access points to satisfy their clients.

However, it is too early to say whether the business model of migrant smuggling would be considerably reduced if the work became significantly more difficult,

riskier and too expensive for many migrants. Lessons from the war on drugs suggest that when profits are high (as they are for both drugs and migrant smuggling) and demand sustained or growing, those involved are unlikely to consider defeat. Some argue that 'per unit', migrant smuggling is more lucrative and valuable than drug trafficking, especially at the high end. For example, migrant smuggling through the Caribbean to the US or Canada can cost between \$35,000 and \$100,000 USD for a single person.<sup>38</sup>

### Interdiction prompts adaptation

For both 'wars', interdiction and restrictions in their current form merely lead to different modes of adaptation. Concerning migrant smuggling, it is perhaps migrants that adapt their behaviour and aspirations more than smugglers. But the question is, how far increased interdiction can erode the competitive advantage of existing routes for both DTOs and migrant smugglers. Interdiction crackdowns by one country may well affect others. Co-ordinating decision-making internationally will be extremely difficult both institutionally and operationally but without such coordination, negative outcomes for both activities will likely be displaced across borders.

If the 'balloon effect' can be shown to be no longer relevant (i.e. activities are not displaced by interdiction but represent a net reduction) then the justification for intensified interdiction is strengthened. Some observers claim, however, that macro-evidence indicates that it has been consistently difficult to find any connection between interdiction success and final market outcomes with drugs. It remains to be seen if the same findings can be related to migrant smuggling.<sup>39</sup>

Migrant smuggling has displayed similar characteristics of DTOs in adapting to restrictions and interdiction, although the comparison is weak because far fewer resources, and certainly none using lethal force, have been used against migrant smuggling to date.

36 More than a million migrants reached Europe in 2015. According to IOM, numbers for subsequent years were: 390,432 (2016), 186,768 (2017) and 130,028 (2018 up to 25 November). For more details, see: IOM (2018) *Flow Monitoring - Europe*. <http://migration.iom.int/europe?type=arrivals>

37 The difference can be calculated by comparing the number of recorded irregular migrants arriving in Europe mainly across the Mediterranean and arriving in Italy and Greece with the number that apply for asylum. In 2016 ODI estimated that while 330,000 migrants and refugees were recorded as entering Europe as many as 890,000 would apply for asylum. See <https://www.odi.org/publications/10558-europe-s-refugees-and-migrants-hidden-flows-tightened-borders-and-spiralling-costs>

38 Kong Soo, C. (2015) *Smuggled humans more profitable than drugs*. The Guardian <http://www.guardian.co.uk/news/2015-10-31/smuggled-humans-more-profitable-drugs>

39 Pollack, H. & Reuter, P. (2014) *Does tougher enforcement make drugs more expensive?* *Addiction*. <https://onlinelibrary.wiley.com/doi/abs/10.1111/add.12497>



## Lessons learnt: 2

### Use of interdiction as a deterrent

For decades, large amounts of sophisticated, highly trained and lethal resources have been used to interdict the drugs trade. Despite many operational 'successes', interdiction fails to stop the global rise in drug production, trafficking and consumption. On the contrary, the drug business is spreading yet wider as demand and availability increases in every region.

What is the lesson here? Certainly that interdiction has limited overall effect and, considering the enormous bill (not just financial, but also social and in terms of human deaths associated with interdiction and degradation of civil order) the need to find alternative strategies to end or restrict the drugs trade is urgent. Numerous expert studies confirm this conclusion and some alternative approaches are discussed later in this paper.

Advocates of current policies may argue that what is needed is more, not less, drug interdiction but past results offer little support for this position. Concerning migrant smuggling however, it is too early to say, and the lesson may be that where there are large profits to be made, criminals will adapt and resist interdiction before giving up their activities.

The experience from the war on drugs suggests that even if increased resources and force are used to stop migrant smugglers the results may be limited. However, this conclusion could be challenged by some existing and cited examples where countries have effectively stopped irregular migration and migrant smuggling into their territory, despite the fact that what appears to have actually happened is that they have displaced the business to other routes and other destinations. So perhaps the lesson here is that interdiction and prevention of migrant smuggling, if the chosen policy direction, may not follow drugs' failed trajectory and has a chance of being successful nationally, if coordinated internationally. However, the question remains at what price this would come, particularly for migrants and refugees.

## 3.3: Use of force as a deterrent

### Illicit drugs

#### Pervasive violence...

The war on drugs is notoriously violent. Apart from the vicious gang rivalry and territory wars that kill tens of thousands of gang members, traffickers and dealers globally, the war against drugs by authorities is also fought with violence. In many countries, police and military specialist units, paramilitaries and undercover agents use armed violence against drug traffickers and, in the case of the Philippines, against consumers

Additionally, when operations take place against drug gangs to interdict shipments or arrest gang members and *capos*, the authorities may use sophisticated tracking and listening devices, high calibre weapons, armoured vehicles and air support such as drones and helicopters. A shoot-to-kill approach is often permitted in the war against drugs in many countries where the trade is most virulent. News footage of armoured units storming favelas in Brazil, or private villas in Mexico and Colombia, or chasing 'go-fast' drug trafficking boats on the high seas are frequent. The use of extrajudicial and even arbitrary violence in the Philippines<sup>40</sup> against alleged drug dealers and users may be exceptional, but it is only an extreme end of a spectrum of violence many have come to accept as part of the war on drugs.

By way of an illustration, recent research has shown how the increase in the size of illegal drug markets observed between 1994 and 2008 could be directly linked to approximately 25 percent of the 2014 homicide rate in Colombia, translating into about 3,800 more homicides per year: '...violence is the clearest, crudest and most visible example of the high costs that producer and transit countries have had to pay for waging a war on illegal drugs...'.<sup>41</sup>

Violence, therefore, is a distinct characteristic of the war on drugs and unprecedented in most democratic countries where these means and methods are in sharp contrast with efforts to combat most other types of crime. The means used are akin to those used to fight insurgents and terrorists, and indeed in some countries those engaged in the drugs business may also be involved in terrorism and insurgency, using the former to fund the latter.<sup>42</sup>

40 Human Rights Watch (2018) Philippines: Independently Probe Police 'Hitmen' <https://www.hrw.org/news/2018/11/05/philippines-independently-probe-police-hitmen>

41 Mejía, D. & Restrepo, P. (2013) *Bushes and Bullets: Illegal Cocaine Markets and Violence in Colombia*. Universidad de los Andes–Facultad de Economía–CEDE. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2353979](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2353979)

42 According to Europol's European Migrant Smuggling Centre (EMSC, explored in further detail below), recent investigations have revealed that terrorist groups have made use of migrant smuggling networks to allow their operatives to enter the EU. However, these cases do not suggest that terrorist groups maintain sustained engagement with organised crime groups involved in migrant smuggling. See: <https://www.europol.europa.eu/newsroom/news/europol%E2%80%99s-european-migrant-smuggling-centre-one-year>

### ... with little effect

Drug traffickers protect themselves and their assets with increasingly sophisticated weaponry. The use of weapons has escalated over time and the use of lethal force by state actors has not been successful in reducing violence, discouraging people from entering the drugs trade or stopping the trade itself. Violence may be justified by both sides, but it has not had a positive effect – on the contrary. The impact of the war is also asymmetrical where in poor countries eradication and strategies to reduce supply effectively strengthens the political capital of non-state actors.

... increasing drug law enforcement is unlikely to reduce drug market violence. Instead, the existing evidence base suggests that gun violence and high homicide rates may be an inevitable consequence of drug prohibition and that disrupting drug markets can paradoxically increase violence.<sup>43</sup>

There is emerging analysis around the use of the internet for sale of controlled substance and to what extent it reduces associated violence. One study examines the new sites of 'criminal innovation' – on the so-called Dark Web (including such sites as the Silk Road) – finding that, 'Whereas violence [in the traditional drug trade] was commonly used to gain market share, protect turfs and resolve conflicts, the virtual location and anonymity that the crypto-market provides reduces or eliminates the need – or even the ability – to resort to violence.'<sup>44</sup>

## Migrant smuggling

Using violence to combat migrant smuggling is altogether problematic. Unlike the drugs business, where inanimate goods are being produced, transported, protected, and sold by people involved in the associated crime, migrant smugglers are often in close proximity and intermingled with their very *animate* clients.

There are parallels here with a different international crime: piracy. Combatting piracy has elements of both the drugs war and the war on smuggling in that when pirates are isolated, the use of violence may be justified, but once they have taken hostages and are amongst those the authorities wish to save, then violence and force is rarely used. Even then, the use of force is normally directed at disabling vessels, disarming pirates, depriving them of support or communications or means of movement, not dissimilar to action taken against migrant smugglers at

sea. Ultimately, anti-piracy objectives are mainly to arrest and not kill pirates. Indeed, a shoot-to-kill approach to pirates, even when vessels are under attack, is illegal in many countries – although in 2011/12, when piracy was more prevalent in the Gulf of Aden, some governments permitted it.

### Violence not an option

Violence is normally not an option against migrant smugglers, and while smugglers are sometimes known to be armed to control their charges, they rarely use violence against authorities. To date, smugglers are not known to be heavily armed in the way that drug traffickers are. Often far from it.

As previously noted, migrant smugglers' primary relationship with authorities in many countries is through collusion and corruption. Conflict is rare and given the public visibility of smuggling and the need for smugglers to have working agreements with the authorities, it is not surprising that such business in most locations is facilitated by payments to officials and a general sharing of opportunities afforded to state officials by groups of migrants a long way from home. These opportunities include financial gain through bribes, robbery, extortion and trafficking, as well as sexual gratification and unhindered abuse of basic rights of migrants with impunity.

In some cases, where smugglers have made a show of force, far better trained and armed navy vessels have had to stand down for fear of causing loss of life of migrants. In one such case reported in 2015, smugglers fired shots to warn off Operation Sophia personnel as they retrieved their capsized boat after the European forces had rescued their 400-plus passengers.<sup>45</sup> The military personnel did not return fire or prevent the smugglers retrieving their boat, presumably to re-use it with subsequent migrants. On the other hand, more recently, there have been incidents in the Mediterranean where Libya's EU-trained Coast Guard has used force and fired shots to prevent refugees and migrants departing the Libyan coast and territorial waters. Some incidents have reportedly endangered lives and resulted in deaths of refugees and migrants.<sup>46</sup>

In another case, in the Andaman Sea, also in 2015, the Thai navy reportedly threatened to shoot 400 stranded refugees and migrants on a ship abandoned by smugglers, but then offered to take them ashore peacefully. The offer was refused by the ship's passengers, but the

43 Werb, D., et al. (2011) *Effect of drug law enforcement on drug market violence: A systematic review*. International Journal of Drug Policy. <https://www.sciencedirect.com/science/article/abs/pii/S0955395911000223>

44 Aldridge, J. & David Décarry-Héty, D. (2014) *Not an 'Ebay for Drugs': The Cryptomarket 'Silk Road' as a Paradigm Shifting Criminal Innovation*. SSRN. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2436643](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2436643)

45 Mackay, D. (2015) *Human traffickers shot at Coast Guards as they tried to rescue hundreds of trapped migrants*. Daily Mirror. [http://www.newslocker.com/en-uk/news/uk\\_news/human-traffickers-shot-at-coastguards-as-they-tried-to-rescue-hundreds-of-trapped-migrants/view/](http://www.newslocker.com/en-uk/news/uk_news/human-traffickers-shot-at-coastguards-as-they-tried-to-rescue-hundreds-of-trapped-migrants/view/)

46 Dearden, L. (2017) *Libyan Coast Guard 'opens fire' during refugee rescue as deaths in Mediterranean Sea pass record 1,500*. The Independent. <https://www.independent.co.uk/news/world/europe/refugee-crisis-deaths-mediterranean-libya-Coast-Guard-opens-fire-drowned-gunshots-ngos-rescue-boat-a7754176.html>

episode illustrates the dilemmas for authorities facing irregular maritime migration.<sup>47</sup> By contrast, sea patrols and navies regularly shoot to interdict drug traffickers on the high seas. There are many examples from Peru,<sup>48</sup> to the Caribbean,<sup>49</sup> to the US of such unhesitating use of firepower to interdict drug smuggling.<sup>50</sup>

### Lessons learnt: 3

#### Use of force as a deterrent

*Despite violence being used extensively against drug traffickers, the evidence suggests the only clear result is that the use of weapons has escalated and that some of those involved in the illicit drug trade, as well as law enforcement officers and all too often civilians, die as a result. There is no evidence that the use of lethal force against the trade has reduced its prevalence. For some years studies have shown that stricter law enforcement, including militarised enforcement, has led to an escalation of violence.*

*Clearly, the use of violence against human smugglers is problematic both ethically and legally as long as smugglers are often co-located with their migrant clients. Violence between law enforcement and smugglers is not a characteristic of the migrant smuggling industry, even if coercion and violent rights violation of migrants by smugglers is common. It seems unlikely and undesirable that law enforcement against migrant smuggling will escalate the use of violence to interdict. While there is ample evidence of violence (and abuse) against migrants themselves, this has little to do with the interdiction of smugglers.*

*As the use of violence has not visibly reduced the illicit drugs trade, it would be hard to make an argument to support the use of violence to prevent or reduce migrant smuggling.*

## 3.4: Are the 'wars' reducing demand?

### Illicit drugs

A key premise of policies and strategies that emphasise the eradication of drug crops is that the reduction in supply will reduce consumption by increasing street prices. Eradication efforts have been extensive and occasionally have succeeded (for example China in the 1950s and 1960s and Vietnam in the 1990s and 2000s,<sup>51</sup>) but they have failed to dramatically increase overall prices, including in key consumption markets.

### Misguided policies

The main reason for the historically dominant focus on supply reduction has been the evident rise in demand and irrepressible availability of illicit drugs. Critics may argue that this focus is the result of misdirected policy – policy that should focus on reducing demand and treating addiction rather than disrupting supply. Even if such policies have been increasingly espoused in public rhetoric, practical action often remains little changed:

*“The Obama administration says that drug use should be treated as a health issue instead of a criminal justice issue. Yet its budget and its drug policies have largely emphasized enforcement, prosecution and incarceration at home, and interdiction, eradication and military escalation abroad. Even what the government does spend on treatment and prevention is overstated, as many of its programs are wasteful and counterproductive.”<sup>52</sup>*

As the decades of interdiction pass, the numbers of those using drugs and the spread of easy availability of illicit drugs across the world only increases. Were it not for the massive costs and explosive growth in drug-related prison population, one could be forgiven for thinking the drug war had never taken place at all.

47 Grenoble, R. (2015) Thai Navy Threatened to Shoot Boat Full of Stranded Refugees, Survivor Says. Huffington Post. [http://www.huffingtonpost.com/2015/05/20/survivor-thai-navy-threatened-shoot\\_n\\_7344816.html](http://www.huffingtonpost.com/2015/05/20/survivor-thai-navy-threatened-shoot_n_7344816.html)

48 Vigo, M. (2012) Chilean Navy shoots at Peruvian drug-traffickers at sea. *Travelling & Living in Peru*. <https://www.livinginperu.com/chilean-navy-shoots-at-peruvian-drug-traffickers-at-sea-12547/>

49 Willetts, D. (2016) Royal Marine sniper shoots out engine of speedboat carrying £40m of cocaine with one shot. *The Sun*. <https://www.thesun.co.uk/news/2162664/royal-marine-sniper-shoots-out-engine-of-speedboat-carrying-40m-of-cocaine-with-one-shot/>

50 Eger, C. (2017) Coast Guard releases report on death of suspected drug smuggler. *Guns.com* <http://www.guns.com/2017/02/14/coast-guard-releases-report-on-death-of-suspected-drug-smuggler/>

51 Felbab-Brown, V. op. cit.

52 Drug Policy Alliance (2015) op. cit; For a recent example, see: Lopez, G. (2018) Elizabeth Warren wants answers about Trump's 'pathetic' response to the opioid epidemic. <https://www.vox.com/policy-and-politics/2018/7/19/17590434/elizabeth-warren-trump-opioid-epidemic>.

The focus on supply reduction has failed to control organized crime syndicates or quell drug trade-related violence. The super profits of the illegal drug trade appear to ensure that each kingpin who falls is quickly replaced by another, making supply-side interdiction a ceaseless battle. Besides, as mentioned, the structures of many gangs and cartels do not always depend on kingpins anymore. Even so, the increase in seizures of drugs has increased in recent years and provides some indication not only of more robust interdiction, but also of the quantities on the move and higher levels of demand.

### Inelastic demand

Prohibited and controlled substances have a global demand profile that appears inelastic, meaning higher prices do not lead to less use, but to an increase in total spending. According to the UNODC *World Drug Report 2018*, amid changing patterns of use, the use of new drugs and the spread of drug-use changing geographically across different countries, 'both the range of drugs and drug markets are expanding and diversifying as never before.'<sup>53</sup> UNODC estimated that some 275 million people, or about 5.6 percent of the global population aged 15-64 years, used drugs at least once in 2016. It also noted the markets for many drugs, especially new synthetic drugs and polydrug use are continually evolving, diversifying and growing.

Key drug-use findings of the report include:<sup>54</sup>

- **Cannabis** remains the world's most widely used drug by far. Cannabis use has increased in North and South America, while its use remains high in Western and Central Europe. There is also inconclusive evidence of increased use in many African and Asian countries. Some 145 countries in all regions of the world reported cannabis production in their territory between 2010 and 2016.
- **Amphetamines** were used by an estimated 34.2 million people worldwide in 2016, and more countries are reporting the use of methamphetamines, especially among opioid users in West Africa. In East and South East Asia, amphetamines are one of the most worrying threats of drug use. Seizures of amphetamines reached a record 70 tons in 2016, up 35 percent over the previous year.
- **'Ecstasy'** is used by 0.4 percent of the global population aged between 15 and 64, with rising use recorded across many regions, especially in Western

and Central Europe and in Latin America. Global seizures of ecstasy rose by 37 percent in 2016, to 14 tons.

- Around 18.2 million people across the world used **cocaine** in 2016, with consumption concentrated and probably increasing in North America and South America. Cocaine production has never been higher as coca bush cultivation expanded in Bolivia, Colombia and Peru, and new markets for the drug are emerging.
- Some 10,500 tons of **opium** were produced globally in 2017, a year-on-year increase of 65 percent, and a 120 percent increase over 2015. The total area under opium poppy cultivation in 2017 was almost 418,000 hectares – up 37 percent over 2016 and double the figure for 2006.
- Drug trafficking via hidden areas of the world wide web known as the **darknet** still only account for a very small proportion of global trade, but is growing rapidly, despite the closure of several popular trading platforms, as new online markets spring up as soon as others are shut down. Darknet drug sales are estimated to reach up to \$300 million per year.

### Decades of growth...

Global demand for illicit drugs has evidently increased exponentially since the 1960s and 1970s when recreational drug use became more widespread – often associated with the popular counter culture – and when the 'war' on drugs started (from 1971). A 2011 report by the Global Commission on Drug Policy quoted estimates from the UN that between the decade 1998 to 2008 global consumption of opiates had risen 34.5 percent, cocaine 27 percent and Cannabis 8.5 percent.<sup>55</sup> The latest *World Drug Report* shows this growth is continuing, not only the cases of cocaine and opium but also with regard to methamphetamines, opioid painkillers (the source of 'the worst addiction crisis in American history'<sup>56</sup>) and synthetic drugs, often sold through the internet.<sup>57</sup>

### ...with more to come

Moreover, in a rare attempt to estimate future demand, in 2012 UNODC predicted that despite the level of prohibition and interdiction the global number of illicit drug users was likely to grow by 25 percent by 2050, with the bulk of the increase expected to take place among the rapidly rising urban populations of developing countries. UNODC also predicted that the demographic

53 UNODC (2018b) op. cit.

54 Ibid.

55 Global Commission on Drug Policy (2011) *War on Drugs - Report of the Global Commission on Drug Policy*. <https://www.opensocietyfoundations.org/reports/war-drugs-report-global-commission-drug-policy>. The commission consists of former heads of state and government and other prominent personalities advocating for 'drug policies based on scientific evidence, human rights, public health and safety, for all segments of the population'.

56 Time (2018) *The Opioid Diaries*. <http://time.com/james-nachtwey-opioid-addiction-america/>

57 UNODC (2018b) op. cit.

group likely to experience the greatest growth in illicit drug use was women, as cultural barriers disappear, and gender equality improved.<sup>58</sup>

Evidently, the war against illicit drug demand globally has failed even if the profile of drug use in particular countries is changing over time.

In terms of addressing drug demand in consumer societies it is apparent that the level of effort (and success) used to reduce smoking tobacco has not yet been tried with drug demand. To what extent can lessons be learnt from the concerted international efforts to suppress and reduce the use of tobacco? As the incontrovertible public costs (in terms of lost production and hospital costs) of widespread smoking became clear, let alone the health risks of secondary smoking, governments have consistently worked to reduce demand. Through years of campaigning, as well as banning tobacco commercials, smoking in public places, and branded cigarette packaging, in many countries authorities managed to create a cultural shift in public attitudes towards smoking. At the same time, demand has also been addressed by increasing taxation on tobacco products. Despite the evident public costs of drug addiction and the war against drugs, the level of government engagement to reduce demand for drugs is negligible by comparison with the campaign against tobacco. It's not clear if future generations will experience similar behaviour change and that a subsequent demise in drug demand will follow.

## Migrant smuggling

As previously outlined, the war against migrant smugglers is partial, fragmentary and may be better described not as an actual war but as a collection of loose initiatives, policies and laws aimed at halting irregular migration through the targeting of migrant smugglers.

There is no evidence that policies and interdiction have reduced demand or even correctly targeted the area of demand for migrant smugglers and irregular movement. Instead there has been a heightened focus in discussion and funding allocations<sup>59</sup> on addressing 'root causes of migration'.

## Wrong focus

However, many migration commentators agree that this focus is misplaced and fundamentally misunderstands migration processes and the drivers that in particular lead people to choose to contract human smugglers to assist them to move. Besides, the root causes identified are so diverse and far-ranging – involving economics, governance issues, social-cultural phenomena – that the limited funding directed towards these 'causes' would make little or no difference to movement. Fuelling suspicions that the EU Emergency Trust Fund for Africa is not entirely transparent in its intentions, analysis of recent funding allocations shows that as much is spent on 'improved migration management' (i.e. shutting down migration routes) as creating greater employment opportunities.<sup>60</sup>

What is clear is that efforts to combat smugglers and the demand for smugglers have recently emerged in direct response to sudden surges of migrant movement – and subsequent political panic since 2014. However, there is much to suggest that the demand for smugglers is also at an early stage of its longer-term trajectory.

An analysis of a large-scale study<sup>61</sup> looking at migration aspirations in 2013 stated that, 'for every individual who migrates to another country, there are many others that aspire to do the same. Throughout the world, people are becoming increasingly aware of the possibility of international migration.'<sup>62</sup> The possibility of *regular* migration is only realistic for a small proportion of aspiring migrants: most will have to rely on black market actors – smugglers (to move) and other facilitators (to obtain fake documents, for example.)

In 2015, more than 90 percent of the million-plus migrants who entered Europe irregularly used facilitation services – for the most part migrant smuggling networks – at some point in their journey.<sup>63</sup> This mass movement was triggered by the secondary movement of hundreds of thousands of Syrian refugees previously residing in the Middle East, but also included migrants, asylum seekers and some onward moving refugees from dozens of countries who saw an opportunity open and used smugglers to achieve it.

58 UNODC (2012) *World Drug Report 2012*. <https://www.unodc.org/unodc/en/data-and-analysis/WDR-2012.html>

59 See for example: DW (2018) *Follow the money: What are the EU's migration policy priorities?* <http://www.dw.com/en/follow-the-money-what-are-the-eus-migration-policy-priorities/a-42588136>

60 Ibid

61 This was a survey of 8,000 people from 16 different areas within Morocco, Senegal, Turkey and Ukraine, conducted as part of the project 'Imagining Europe from the Outside (EUMAGINE)'. [https://ec.europa.eu/knowledge4policy/dataset/ds00045\\_en](https://ec.europa.eu/knowledge4policy/dataset/ds00045_en)

62 Carling, J. (2013) *Who wants to go to Europe? Results from a large-scale survey on migration aspirations*. Peace Research Institute Oslo. <https://www.prio.org/Publications/Publication/?x=5854>

63 Europol (2016) *Migrant smuggling in the EU*. [https://www.europol.europa.eu/sites/default/files/documents/migrant\\_smuggling\\_\\_europol\\_report\\_2016.pdf](https://www.europol.europa.eu/sites/default/files/documents/migrant_smuggling__europol_report_2016.pdf)

## Desire vs intent

In 2009, Gallup issued the results of its global survey on migration.<sup>64</sup> Reflecting on aspirations, Gallup analysis found that 16 percent of the world's adults would like to move to another country permanently if they had the chance, representing approximately 700 million people worldwide. However, these figures can be misleading as they do not indicate *serious* intent to move. Based on data from 2010 to 2015 from Gallup, worldwide, 1.3 percent of the adult population, 66 million people, said they were *planning* to migrate permanently within the next 12 months.<sup>65</sup> Even less actually start their journey. Thirty-eight percent of the adult population of sub-Saharan African countries expressed a desire to move abroad permanently. If the opportunity arises in the region, approximately 165 million people say they would like to migrate. Residents in Asian countries are the least likely to say they would like to move – with just 10 percent of the adult population, or roughly 250 million people, expressing a desire to migrate permanently. Even if only a proportion of these people decide to actually migrate, the demand for migration will almost certainly outweigh the supply of *regular* migration options to their desired destinations, and the role of human smugglers would be strengthened by increased demand.

## Demand set to grow

Demand for migrant smuggling is, therefore, likely still in its early years of growth, as are the efforts to curtail migrant smuggling (as distinct from human trafficking). While the number of people who move irregularly currently constitutes a small minority among all those who migrate each year, there is evidence that demand is growing. Moreover, if earlier studies are to be trusted, the 'aspiration gap' – the difference between the numbers of those who want to move and of those that actually do so – is huge.

Compared with the demand for illicit drugs, which are linked to hundreds of thousands of annual deaths around the world, and therefore threaten 'health and well-being as well as security, safety and sustainable development,'<sup>66</sup> the reasons for the demand for migrant smuggling are far more apparent. Indeed, the direct benefits to those who successfully use smugglers to migrate and to those they are connected to (family/home communities) are often tangible and visible.

## Many drivers

The drivers contributing to rising demand for smugglers by refugees and other migrants are indivisible from the multifarious root causes that compel or persuade people to move at all. In an increasingly connected and globalised world, the combined forces of poor and/or predatory governance, lack of opportunity, overpopulation, regional and international inequality, demographic pressures and environmental stress force many to choose mobility – whether as economic migrants or asylum seekers. Not to mention the role of adventurism and aspirations among millions of youth who see a very different world from their own via satellite television or their smart phones – through social media, the internet, direct contact and so forth.<sup>67</sup>

The days when war or famine were the main or sole cause for displacement are over. More generic and long-standing forces – emblematic of structural changes globally – are therefore likely to create the demand for mobility. Then, as long as legal options to move are increasingly limited, and as the global appetite to share the burden of hosting refugees wanes, people will turn to human smugglers.

The combination of constrained options and the availability of smuggler-facilitated irregular migration ensures that demand for migrant smuggling will grow, possibly in direct proportion to the impact of this combination. Concerted efforts to control or reverse large-scale demand for migrant smugglers have not even started, even if certain barriers and emergency policies have recently been put in place to mitigate flows. It remains to be seen what impact anti-smuggling interdiction will have in the medium and long term. Clearly efforts to curtail and suppress drug supply (and demand) have failed, but the efforts to stop migrant smuggling to date are too sporadic, incoherent and few to warrant fair comparison.

64 Results are based on aggregated telephone and face-to-face interviews with 259,542 adults, aged 15 and older, in 135 countries from 2007 to 2009. The 135 countries surveyed represent 93% of the world's adult population. See: Esipova, N. & Ray, J. (2009) *700 Million Worldwide Desire to Migrate Permanently*. Gallup. <https://news.gallup.com/poll/245255/750-million-worldwide-migrate.aspx>

65 However, of this group, only approximately a third, 23 million, or 0.4 percent of adults around the world, have made preparations to move, such as applying for a visa, saving money for the trip or learning the language of their desired destination. See: IOM (2017) *Measuring Global Migration Potential, 2010–2015*. [https://publications.iom.int/system/files/pdf/gmdac\\_data\\_briefing\\_series\\_issue\\_9.pdf](https://publications.iom.int/system/files/pdf/gmdac_data_briefing_series_issue_9.pdf)

66 UNODC (2018b) op. cit.

67 A full discussion of these factors coming together and creating mass demand for movement are discussed in: Horwood, C. & Reitano, T. (2016) *A Perfect Storm? Forces shaping modern migration & displacement*. Regional Mixed Migration Secretariat. [http://www.mixedmigration.org/wp-content/uploads/2018/05/022\\_a-perfect-storm.pdf](http://www.mixedmigration.org/wp-content/uploads/2018/05/022_a-perfect-storm.pdf)

## Lessons learnt: 4

### Are the 'wars' reducing demand?

- The inelasticity of drug demand to price has meant that profits from the illicit trade increase with demand, and any additional costs incurred are passed on to consumers with impunity.
- Global demand for illicit drugs is the highest it has ever been and despite the resources expended in interdiction and disruption, the demand is spreading wider geographically and deeper into developing countries. Meanwhile new demand patterns are emerging as new synthetic drugs and use of the dark web for purchases rises.
- It is impossible to say what global demand would be if recent decades of prohibition and disruption had not occurred, but it is safe to assume that one lesson learnt is that current and past policies to reduce demand have not been successful.
- The scale of current migrant smuggling activities is probably relatively low in comparison to anticipated future demand, as indicated by aspirational studies and consideration of future drivers.

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68 However, it should be noted that addressing the root causes of demand for mobility and the subsequent use of migrant smugglers inevitably raises issues of international inequality, globalisation and poor governance etc. which, arguably, many multilateral and bilateral socio-political initiatives have sought to ameliorate for decades.

**Photo credit:** Lianne Milton / Panos.  
Medellin, Colombia (2015)

Members of the Colombian army patrol in Comuna 8. The patrol was set up by the communications department to demonstrate public security in the city. Although they frequently patrol unannounced in neighbourhoods and usually target specific drug traffickers based on intelligence information, this patrol concentrated on frisking young men and raiding party spots for small amounts of marijuana.

Medellin was voted the most innovative city in the world in 2012 by the Wall Street Journal and CitiBank for its 'social urbanism' approach to transforming itself from being one of the most violent cities in the world by investing in the poorer communities. Despite all the improvements, Medellin's residents continue to be displaced from their homes by inner city drug gangs and a half century of war, the world's longest lasting current conflict.





# Section 4: The policy context

## 4.1: The failures of the war on drugs

Discussions about the failures of the 'war on drugs' have been taking place at various national and international levels for decades. As long ago as 1986, the US Defense Department funded a two-year study which found that the use of the armed forces to interdict drugs coming into the United States would have little or no effect on cocaine traffic and would probably raise the profits of cocaine to traffickers.<sup>1</sup> Three decades on, and after countless studies about various aspects of the war's failures, in many countries, especially drug consuming countries, a major rethink is under way.

### 'Devastating consequences'

The Global Commission on Drug Policy has led this charge since its first report came out in 2011. Its opening statement pulled no punches:

*“The global war on drugs has failed, with devastating consequences for individuals and societies around the world. Fifty years after the initiation of the UN Single Convention on Narcotic Drugs, and 40 years after President Nixon launched the US government’s war on drugs, fundamental reforms in national and global drug control policies are urgently needed.”<sup>2</sup>*

The commission has published reports annually since then, addressing issues such as the war on drugs' impact on public health, new approaches to criminalisation, and countering prejudice against drug users.<sup>3</sup> Its 2018 report 'examines in detail how governments can take control of currently illegal drug markets through responsible regulation, thereby weakening criminal organizations that now profit from them.'<sup>4</sup>

### An eroding consensus

The consensus that underpinned the UN-endorsed prohibition-oriented system is, in some places, breaking apart and there are new movements towards accepting global policy pluralism and that different policies will work for different countries and regions instead of an all-out war.

### Latin America breaks ranks

Those calling for a rethink and re-direction are rising in number, especially from South America – countries that have borne the brunt of the war on drugs. In 2009, the Latin American Commission on Drugs and Democracy, convened by former presidents Fernando Henrique Cardoso of Brazil, César Gaviria of Colombia and Ernesto Zedillo of Mexico, evaluated the impact of the 'war on drugs' policies and called for an in-depth paradigm shift in the strategy to deal with the drug problem in Latin America: 'Prohibitionist policies based on eradication, interdiction and criminalisation of consumption simply haven't worked,' they stated, 'the revision of US-inspired drug policies is urgent in the light of the rising levels of violence and corruption associated with narcotics.'<sup>5</sup>

In 2011, a meta-review of the relationship between the war on drugs and violence found that 'disrupting drug markets can paradoxically increase violence [and that] since drug prohibition has not meaningfully reduced drug supply, alternative regulatory models will be required if drug supply and drug market violence are to be meaningfully reduced.'<sup>6</sup>

### 'Enormous negative outcomes'

In 2014, the London School of Economics (LSE) Expert Group on the Economics of Drug Policy released a major report titled *Ending the Drug Wars*.<sup>7</sup> The report frequently used economic analysis to show how the global policies of drug prohibition and interdiction had 'produced enormous negative outcomes and collateral damage,' including, *inter alia*, 'mass incarceration in the US, highly repressive policies in Asia, vast corruption and political destabilization in Afghanistan and West Africa, immense violence in Latin America, an HIV epidemic in

1 Reuter, P., Crawford, G. & Cave, J. op. cit. This study noted that seven prior studies in the previous nine years, including one by the Center for Naval Research and the Office of Technology Assessment, had come to similar conclusions.

2 Global Commission on Drug Policy (2011) op. cit.

3 See: <http://www.globalcommissionondrugs.org/reports/>

4 Global Commission on Drug Policy (2018) *Regulation - The Responsible Control of Drugs*. <http://www.globalcommissionondrugs.org/reports/regulation-the-responsible-control-of-drugs/>; [http://www.globalcommissionondrugs.org/wp-content/uploads/2018/01/GCDP-Report-2017\\_Perceptions-ENGLISH.pdf](http://www.globalcommissionondrugs.org/wp-content/uploads/2018/01/GCDP-Report-2017_Perceptions-ENGLISH.pdf)

5 Quoted in: Vulliamy, E. (2011) *Nixon's 'war on drugs' began 40 years ago, and the battle is still raging*. The Observer. <https://www.theguardian.com/society/2011/jul/24/war-on-drugs-40-years>. For an analysis of the commission's landmark report, see: Casas-Zamora, K (2009) *Drugs and Democracy: Toward a Paradigm Shift*. Brookings. <https://www.brookings.edu/opinions/drugs-and-democracy-toward-a-paradigm-shift/>

6 Werb, D. et al. op. cit.

7 LSE Ideas, op. cit.

Russia, and an acute global shortage of pain medication,' among other 'systematic human right abuses around the world.'

The report included contributions from leading economists and political figures. They agreed that the losers of the illegal drug market included virtually everybody who was not involved in producing illegal drugs. Some argue that from an international political economy point of view, the current operationalisation of prohibition is 'little more than the transfer of a major part of the costs of the drug problem from consumers to producer and transit nations'.<sup>8</sup>

In March 2016 former presidents of Brazil, Colombia and Mexico – all of whom have first-hand experience from the frontlines of the war on drugs – launched another broadside, in the form of an op-ed published in the Washington Post. Drawn in part from their own 'failures', it described 'outdated drug policies' as an 'unmitigated disaster' and denounced the UN for secrecy ahead of the General Assembly Special Session on the World Drug Problem (UNGASS).<sup>9</sup>

In the event, UNGASS advocated a rather balanced and holistic approach to the drugs problem, albeit while still unequivocally supporting the cornerstone prohibitionist conventions of 1961, 1972 and 1988.<sup>10</sup>

## New approaches needed

Experts have argued that new drug policies should be focused more on addiction treatments, consumption prevention and health programs in user countries as opposed to counter-narcotic strategies in producer and transit countries.

Interestingly, in early 2019 after one of Mexico's worst years for drug related violence, the Mexican president claimed the war on drugs was over and they would no

longer target the cartel heads.<sup>11</sup> At the same time Mexico is moving towards legalising cannabis and in February the notorious Sinaloa drugs lord, Joaquín Guzmán ('El Chapo') was convicted in a New York court.<sup>12</sup> He was the highest profile drug boss to ever stand trial in the US but indications are that with Colombian cocaine production booming and US demand for the drug only rising the conviction of El Chapo will only intensify turf war between drugs cartels in Mexico.<sup>13</sup>

## Legalize it

Among many drug policy reformers, there is an emerging insistence that decriminalisation, public health, treatment and harm reduction-based policies, and even legalising some drugs (such as cannabis in Uruguay 2013<sup>14</sup>) are more appropriate than punitive policies for controlling consumption. 'Worldwide, there has been a clear trend to adapt similar reforms to local needs, and more countries are moving towards health-centred approaches. Some form of decriminalization now exists in over 23 countries'.<sup>15</sup>

In 2010 some scholars estimated that the United States could save approximately \$41.3 billion per year by legalizing drugs.<sup>16</sup> A sum that has most likely increased by 2018 not to mention the considerable revenue through drug taxation anticipated by pro-legislation lobby.<sup>17</sup>

At the 2012 Summit of the Americas in Cartagena, Colombia, Latin American leaders for the first time openly discussed whether 'legalizing and regulating drugs should be the hemisphere's new approach'.<sup>18</sup>

This attitude has been attributed in part to a 'decreased willingness of producer and transit countries to mortgage their national security interests in exchange for receiving partial funding to implement supply-reduction efforts'.<sup>19</sup>

As the Colombia's then president Juan Manuel Santos

- 8 Mejía, D. & Restrepo, P. (2014) *Why Is Strict Prohibition Collapsing? A Perspective from Producer and Transit Countries*. Published in: LSE Ideas op. cit.
- 9 Cardoso, F. Gaviria, C. & Zedillo, E. (2016) *Diplomats attending the UN special session on drugs next month must confront the obvious failure of most existing drug laws*. Los Angeles Times. <https://www.latimes.com/opinion/op-ed/la-oe-0311-presidents-drug-war-fail-20160311-story.html>
- 10 UNODC (2016) *Outcome Document of the 2016 United Nations General Assembly Special Session on The World Drug Problem*. <https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf>
- 11 Quackenbush, C. (2019) 'There Is Officially No More War.' *Mexico's President Declares an End to the Drug War Amid Skepticism*. Time magazine. January 31st 2019. Available at: <http://time.com/5517391/mexico-president-ends-drug-war/>
- 12 Feuer, A. (2019) *El Chapo Found Guilty on All Counts; Faces Life in Prison*. New York Times. February 12th 2019. Available at: <https://www.nytimes.com/2019/02/12/nyregion/el-chapo-verdict.html>
- 13 Webber, J. (2019) *After 'El Chapo': Mexico's never-ending war on drugs*. Financial Times On-line. 20th February 2019. Available at: <https://www.ft.com/content/69346c82-338c-11e9-bb0c-42459962a812>
- 14 For a global round-up of the liberalization of marijuana laws, see: Medrano, K. (2018) *The Best Countries Around the World to Smoke Weed*. Thrillist. <https://www.thrillist.com/vice/30-places-where-weed-is-legal-cities-and-countries-with-decriminalized-marijuana#>
- 15 Interview with Ruth Dreifuss, chair of the Global Commission on Drug Policy, and former president of Switzerland. <http://www.globalcommissionondrugs.org/wp-content/uploads/2017/12/2017-Report-Press-Kit-ENG.pdf>
- 16 Miron, J. & Waldock, K. (2010) *The Budgetary Impact of Ending Drug Prohibition*. Cato Institute. <https://www.cato.org/publications/white-paper/budgetary-impact-ending-drug-prohibition>
- 17 Arcview Group (2017) *The State of Legal Marijuana Markets - Fifth Edition*. [http://arcviewgroup.com/documents/report/5thedition/es/executive-summary\\_the-state-of-legal-marijuana-markets\\_5th-edition\\_22qxqmRQPyp7R.pdf](http://arcviewgroup.com/documents/report/5thedition/es/executive-summary_the-state-of-legal-marijuana-markets_5th-edition_22qxqmRQPyp7R.pdf). According to this report, medical and adult-use legal cannabis sales in the US states of Colorado, Washington, and Oregon alone generated more than \$500.8 million in taxes throughout 2016.
- 18 Baum, D. (2016) op. cit.
- 19 Mejía, D. & Restrepo, P. (2014) op. cit.

stated in a 2016 interview shortly before legalising medical marijuana by decree, 'if you fight a war for forty years and don't win, you have to sit down and think about other things to do that might be more effective.'<sup>20</sup>

### Strategic selectivity

Some experts argue that states should move law enforcement assets away from random, non-strategic strikes and blanket 'zero-tolerance' approaches against lowest-level offenders, and instead work 'toward strategic selectivity to give each counter-crime operation enhanced impact'.<sup>21</sup> In 2009, Britain's Transform Drug Policy Foundation published a 232-page report, *After the War on Drugs: Blueprint for Regulation*. The authors suggested issuing licenses for buying and using drugs, with sanctions for those who break rules, in the same way as licences are issued all over the world for driving and, in some jurisdictions, possessing firearms.<sup>22</sup>

International conferences, symposiums and research papers around the world are now repeatedly echoing disenchantment with traditional counter-narcotic policies. Generally, prohibition is recognised as extraordinarily expensive on multiple dimensions, including budgetary costs, enrichment of criminal gangs and deprivation of liberty.

It could be argued that in Mexico and Columbia, as examples, it was precisely the prohibitionist policies that created the ideal context that enabled guerrillas, paramilitaries and drug cartels to finance their criminal activities and establish such a criminal hold throughout society.<sup>23</sup>

Additionally, there are the often overlooked constitutional costs of the war on drugs – many countries and societies have undertaken profound restructuring of some of their key 'normative and political commitments' so as to wage a more unrestricted war on drugs – what some regard as 'the evisceration of constitutional barriers to state power'.<sup>24</sup>

Another aspect of the unsustainability of prohibition policies is that traffickers may be forced to migrate to countries least able to defend themselves, leading to failed states. 'Failed narco-states are in nobody's

interests, so an alternative would be for states that are net losers under prohibition to withdraw from the international control regime, in hopes of being able to control, regulate and even tax legal production'.<sup>25</sup>

### The prevalence of prohibition

Despite the more widespread discussions around decriminalisation and legalisation of drugs as a more prudent approach, the United Nations-led counter narcotics, prohibitionist doctrine still prevails in practice and calls for reform have gone unheeded in many parts of the world. Russia under President Putin has implemented tougher policies, while China and many countries in Asia and the Middle East continue to defend their harsh punishments of users as well as local dealers. More than 200 people have been executed in Saudi Arabia for nonviolent drugs crimes since 2013.<sup>26</sup>

### All-out war in the Philippines

Launched in 2016, the anti-narcotics campaign in the Philippines has been waged with exceptional brutality under the leadership of President Duterte, and yet has been described by the country's drug enforcement agency chief, Isidro Lapeña as 'successful'.<sup>27</sup> Government reports indicated that by late 2017 over 1.3 million people had surrendered to the authorities and almost 120,000 'drugs personalities' had been arrested as illustration of their success. By the end of 2017 Human Rights Watch estimated that 12,000 people had been killed<sup>28</sup> and in February 2018 a Filipino Senator claimed the number was over 20,000.<sup>29</sup> (Philippines police put the number at around 5,000.<sup>30</sup>) It wasn't until November 2018, when three police officers were convicted of murdering a teenager and jailed for up to 40 years, that the police were significantly held to account for the manner in which they have waged the war on drugs.<sup>31</sup>

### The case for prohibition

Despite the evident failures of the war on drugs some argue that 'an honest discussion must look fairly at prohibition's benefits as well as its costs.'<sup>32</sup> Imperfect though it may be, the prohibitionist approach has surely prevented large amounts of drugs making their way onto

20 Baum, D. op. cit.

21 Felbab-Brown, V. (2014) op. cit.

22 Rolles, S. (2009) *After the War on Drugs: Blueprint for Regulation*. TRANSFORM. <https://www.tdpf.org.uk/resources/publications/after-war-drugs-blueprint-regulation>

23 Atuesta, L. (2014) *Addressing the Costs of Prohibition: Internally Displaced Populations in Colombia and Mexico*. Published in: LSE Ideas op. cit.

24 Lajous, A. (2014) *The Constitutional Costs of the 'War on Drugs'*. Published in LSE Ideas op. cit.

25 UNODC (2016) *World Drugs Report 2016*. [https://www.unodc.org/doc/wdr2016/WORLD\\_DRUG\\_REPORT\\_2016\\_web.pdf](https://www.unodc.org/doc/wdr2016/WORLD_DRUG_REPORT_2016_web.pdf)

26 Human Rights Watch (2018) *Saudi Arabia: Rights Abuses Under Scrutiny*. <https://www.hrw.org/news/2018/11/15/saudi-arabia-rights-abuses-under-scrutiny>

27 Ross, E. (2017) *Philippines president Duterte's drug war one year on: at least 7,000 are dead, but it's been 'successful'*. Newsweek. <http://www.newsweek.com/dutertes-drug-war-7000-success-630392>

28 Human Rights Watch (2018) *Philippines: Duterte's 'Drug War' Claims 12,000+ Lives*. <https://www.hrw.org/news/2018/01/18/philippines-dutertes-drug-war-claims-12000-lives>

29 Regencia, T. op. cit.

30 BBC News (2018) *Philippines drug war: Police guilty of murdering Kian Delos Santos*. <https://www.bbc.com/news/world-asia-46381697>

31 Ibid.

32 Caulkins, J. (2014) *Effects of Prohibition, Enforcement and Interdiction on Drug Use*. Published in LSE Ideas op. cit.

the street. And with drug offences estimated to account for 40 percent of the 10.3 million individuals jailed globally, if nothing else, prohibition strategies have been successful in the hyper-incarceration of transgressors.

With decades of counter-narcotic work behind him, James Soiles, the former deputy head of operations at the Office of Global Enforcement for the Drug Enforcement Administration (DEA), recently wrote that the policy reformers are mistaken, that they offer myths and false facts to support their case and that research from a wide range of reputable institutions refutes the notion that legalisation offers any solution. He joins others who maintain that prohibition and enforcement cannot be abandoned but must work with alternative and custom made, context-specific approaches.<sup>33</sup>

There is even a libertarian case to be made for prohibition, on the ground that 'recreational drug use interferes with clear thinking' and that therefore they 'should be legally restricted because their use is incompatible with the vision of a freedom-respecting liberal state'.<sup>34</sup>

### It's complicated

In the continuing debate, even reformers recognise that to realize benefits from ending drug prohibition will take more than simply declaring that drugs are legal. Some fear that the risks are very high. 'A sharp increase in drug dependence or overdoses that followed the legalization of drugs would be a public-health disaster, and it could very well knock the world back into the same counterproductive prohibitionist mind-set from which we appear finally to be emerging.'<sup>35</sup> Others are more cautious in their assessment: 'The fundamental dilemma is that full legalization will probably reduce average harm per use but increase total consumption; the net effect of these two changes is difficult to project.'<sup>36</sup>

Reformers recognise that legalisation in the drugs market is complex and needs to be carefully calibrated and with trial and error over time will find a balance.

Others advocate a more nuanced response to drug trafficking and other forms of organised crime:

**“Focused-deterrence strategies, selective targeting, and sequential interdiction efforts**

*are being increasingly embraced as more promising law enforcement alternatives. They seek to minimize the most pernicious behavior of criminal groups, such as engaging in violence, or to maximize certain kinds of desirable behavior sometimes exhibited by criminals, such as eschewing engagement with terrorist groups. The focused-deterrence, selective targeting strategies also enable overwhelmed law enforcement institutions to overcome, certain under resourcing problems.*<sup>37</sup>”

Defending the elimination of illicit crop cultivation, UNODC reports that available research has shown that such efforts have positive development outcomes in the affected communities *only* if they include development measures to ensure alternative livelihoods and restore security and rule of law. They cite promising examples in Colombia and Peru where effective alternative development programmes can weaken the population's ties with armed groups and drug trafficking.<sup>38</sup>

## 4.2: The scattershot war against migrant smuggling

Politicians know all too well that migration serves vital economic interests and cannot stop immigration even if they would want so, but do not dare to tell so to their voters. Their tough talk about reducing immigration is usually nothing more than a smokescreen to hide their inability and unwillingness to stop immigration.<sup>39</sup>

**“...while anti-smuggling measures have intensified [over the last few years], what is also evident – if not always fully evidenced – is that the business of people smuggling has also intensified. How then to address a dynamic that increases in the face of increased efforts to tackle it?”<sup>40</sup>”**

33 Soiles, J (2018) *The drug legalization debate: The case for an enforcement approach*. The Global Initiative Against Transnational Organized Crime. [http://globalinitiative.net/un-toc\\_watch8a/](http://globalinitiative.net/un-toc_watch8a/)

34 Hsiao, T. (2018) *The Libertarian Case for Drug Prohibition*. Public Discourse. <https://www.thepublicdiscourse.com/2018/01/20650/>

35 Baum, D. op. cit.

36 MacCoun, R. & Reuter, P. (2011) *Assessing Drug Prohibition and Its Alternatives: A Guide for Agnostics*. Annual Review of Law and Social Science. <https://www.annualreviews.org/doi/abs/10.1146/annurev-lawsocsci-102510-105442>

37 Felbab-Brown, V. (2013) *Focused Deterrence, Selective Targeting, Drug Trafficking and Organized Crime: Concepts and Practicalities*. Brookings. <https://www.brookings.edu/research/focused-deterrence-selective-targeting-drug-trafficking-and-organized-crime-concepts-and-practicalities/>

38 UNODC (2016) *World Drugs Report 2016*. [https://www.unodc.org/doc/wdr2016/WORLD\\_DRUG\\_REPORT\\_2016\\_web.pdf](https://www.unodc.org/doc/wdr2016/WORLD_DRUG_REPORT_2016_web.pdf)

39 De Haas op. cit.

40 Perkowski, N. & Squire, V (2018) *The anti-policy of European anti-smuggling as a site of contestation in the Mediterranean migration 'crisis'*. Journal of Ethnic and Migration Studies. [https://warwick.ac.uk/fac/soc/mmrp/outputs/the\\_anti\\_policy\\_of\\_european\\_anti\\_smuggling\\_as\\_a\\_site\\_of\\_contestation\\_in\\_the\\_mediterranean\\_migration\\_crisis.pdf](https://warwick.ac.uk/fac/soc/mmrp/outputs/the_anti_policy_of_european_anti_smuggling_as_a_site_of_contestation_in_the_mediterranean_migration_crisis.pdf)

Isolating states' policies used to address migrant smuggling is made problematic for any researcher by the almost ubiquitous entanglement of anti-migrant smuggling strategies, policies and related reports and statistics with efforts to combat human trafficking – the legally distinct but sometimes associated crime. Some argue the association is inherent and call for a broadening of the legal definition of trafficking – which hinges on coercion and exploitation at destinations – to take into account the increased *en route* exploitation of smuggled migrants<sup>41</sup> sometimes also called aggravated smuggling: 'even if smuggling does not turn into trafficking, the underlying and facilitating factors characterising both are intertwined, thus strategies and actions to curb smuggling may be applicable to trafficking in persons and vice versa'.<sup>42</sup>

“What starts out as a simple transaction involving a person seeking the services of a smuggler may end up with the migrant being deceived, coerced and/or exploited somewhere along the line given the often-unequal power relationships between smugglers and migrants – a smuggled migrant may quickly and unwillingly become a trafficked person.”<sup>43</sup>

### Language matters

The two activities are often addressed together in reports and assessments and the term anti-trafficking is frequently used erroneously for anti-migrant smuggling by the media, as well as by national judiciaries and executives – despite efforts of the UN Office on Drugs and Crime and the International Organization for Migration and others to educate people about the differences.

Additionally, while prohibitionist drugs policies can be easily identified, policies addressing migrant smuggling are normally embedded and inextricably connected to wider migration and refugee/asylum policy, making specific initiatives hard to isolate and analyse. Some authorities and declarations on migrant smuggling use language expressing a wish to 'disrupt the business model' or 'undermine the activities' of smugglers, suggesting a hesitancy or reluctance to fully engage. By contrast, the language of counter-narcotics is unequivocal and far more combative.

### Current trends

Evidence to date points to five broad findings in relation to fighting migrant smuggling:

1. National and global policies designed to fight migrant smuggling are scattered and lack coherence, consistency or consensus of approach – unlike the international, UN-led prohibitionist counter-narcotic policy consensus. Additionally, in some cases, anti-smuggling interventions and policies are complicated by being combined with ancillary and different agenda such as combatting human trafficking, promoting national security and humanitarian objectives ('saving lives').
2. Except in the case of Libya (see below) resources directed towards halting migrant smuggling have generally had little or no impact in disrupting the business models – on the contrary, like drug trafficking, global migrant smuggling appears to be on the ascendant. In contrast to the maturity of the illicit drugs market, migrant smuggling shows every sign of being in its early stages of its potential growth.<sup>44</sup>
3. Many of the policies and actions in the fight against migrant smuggling are very recent and still developing, so it may be too early to judge their impact.
4. In reaction to the high number of smuggler-facilitated people on the move, especially towards Europe between 2014 and 2016, governments and blocs rushed to find policies to address migrant flows. As a result, it is a fast-changing sector, with Europe offering strongest examples of attempting a range of new approaches related to land and sea routes.
5. There are ethical considerations around fighting migrant smuggling in so far that it often involves vulnerable humans, including asylum seekers, refugees and others with specific rights under international law. This means that developing and implementing effective anti-smuggling policies will continue to be problematic.<sup>45</sup>

41 Carling, J., Gallagher, A. & Horwood, C. (2015) *Beyond Definitions: global migration and the smuggling–trafficking nexus* RMMS. [http://www.mixedmigration.org/wp-content/uploads/2018/05/021\\_beyond-definitions.pdf](http://www.mixedmigration.org/wp-content/uploads/2018/05/021_beyond-definitions.pdf)

42 OECD (2015) *Can we put an end to migrant smuggling?* <https://www.oecd.org/migration/Can%20we%20put%20an%20end%20to%20human%20smuggling.pdf>

43 McAuliffe, M. & Laczko, F. (eds) (2016) *Migrant Smuggling Data and Research: A global review of the emerging evidence base*. [https://publications.iom.int/system/files/smuggling\\_report.pdf](https://publications.iom.int/system/files/smuggling_report.pdf)

44 According to Europol, 'Migrant smuggling to and within the EU is likely to remain a key criminal threat.' (Europol (2018) op. cit.)

45 See, for example: Landry, R. (2016) *Human & humanitarian smugglers: Europe's scapegoat in the 'refugee crisis'*. EU Law Analysis. <http://eulawanalysis.blogspot.com/2016/10/human-humanitarian-smugglers-europes.html>. This blog post examines the de facto criminalisation of certain humanitarian actions relating to smuggled migrants in distress and the criminalisation of migrants in an irregular situation and of persons engaging with them.

## 4.3: European Union responses to migrant smuggling

EU resources devoted to combat migrant smuggling since the 1990s have been increasing incrementally but there was no explicit EU policy on the issue until the summer of 2000 when the French presidency of the European Council drew up a legislative proposal for a 'Framework Decision on Strengthening the Penal Framework for Preventing the Facilitation of Unauthorized Entry and Residence'. The immediate trigger for this was a high-profile smuggling case with tens of fatalities.<sup>46</sup> The proposal was adopted in November 2002.<sup>47</sup>

The EU (and some of its member states) reacted to the surge of irregular migration flows in 2015 and 2016 mainly through increased border securitisation, but also, more recently, through 'externalisation'.

In May 2015, the European Commission drew up the *European Agenda on Migration*<sup>48</sup> as a broad policy framework with saving lives at sea and tackling criminal smuggling networks as key short-term priorities. The agenda has four areas of focus:

- Reducing incentives for irregular migration;
- Efficient border management;
- Strengthening the EU's common asylum policy; and
- Updating policy on legal migration.

The EU's policies, several manifestations of which are set out below, are, purportedly at least, guided by the notion that those 'being smuggled often face a risk of serious harm or exploitation. The EU as a whole also faces related challenges, including security and safety concerns as well as socio-economic impacts.'<sup>49</sup>

### Selected EU operations in brief

Preventing drownings and other fatalities in the Mediterranean has often been the stated justification behind particular policies being enacted.<sup>50</sup> Media coverage of deaths at sea has put European politicians under pressure to do *something*. The most common

reaction so far has been to take steps to curtail irregular migration – and, in some cases, to specifically curb migrant smuggling – with increased maritime border securitisation and with varying degrees of success:

- In 2006, Frontex (the European Border and Coast Guard Agency), launched a coordinated operation called **Hera** (parts I, II and III) that diverts migrants heading to Spain's Canary Islands back to their points of departure on the West African coast. Experts from Germany, Italy, Luxembourg and Portugal have been deployed in the Canary Islands and worked together with Spanish authorities on gathering intelligence-related information. Joint aerial and naval patrols involving several nation states between West Africa and the Canary Islands are also part of this operation. It has been argued that this operation indirectly led to the 'intensification of smuggling networks along the West African Coast'.<sup>51</sup> Hera was still running as recently as 2015. In 2010, Frontex launched Joint Operation **RABIT** (Rapid Border Intervention Teams) to help Greece guard its land border with Turkey.
- In 2011, Frontex extended the operational area of its ongoing Joint Operation **Poseidon Sea** to the Greek Islands in the Aegean Sea, including Crete.
- In October 2013, Italy launched **Mare Nostrum**, a year-long military-humanitarian operation led by its navy. The operation was aimed at identifying boats in distress, rescuing migrants, and apprehending 'human traffickers'. The operation rescued about 177,000 people.
- March 2015 saw the launch by Europol of **Joint Operation Team Mare** with the aim of combatting organised crime groups involved in the smuggling of migrants by boat across the Mediterranean. This was later integrated into the European Migrant Smuggling Centre (see below).
- Between October 2014 and June 2015 **Triton** was in force in the Mediterranean: a border control operation run by Frontex, prioritising border enforcement over search-and-rescue.

46 On June 18, 2000, customs officials in UK's Dover port found bodies of 58 Chinese nationals in a sealed container filled with tomatoes. The Chinese migrants had suffocated, except for two survivors. The Dover incident featured in almost all policy documents on migrant smuggling that appeared after 2000. Moreover, the Dover case played a crucial role in discussions around penalising migrant smuggling in the EU context.

47 The full text of the Decision can be found at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002F0946&from=EN>

48 The full text of this Communication can be found at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52015DC0240&from=EN>

49 European Parliament (2016) *Combating migrant smuggling into the EU – Implementation Appraisal*. [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/581391/EPRS\\_BRI%282016%29581391\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/581391/EPRS_BRI%282016%29581391_EN.pdf)

50 Deaths on European borders have been the impetus for political action and ethical outrage of those opposed to more restrictive entry. Various databases record migrant deaths at or near EU frontiers. See: UNHCR (<https://data2.unhcr.org/en/situations/mediterranean>); IOM (<http://migration.iom.int/europe?type=missing>); UNITED Against Racism has documented some 34,361 deaths since 1993 (<http://www.unitedagainstracism.org/campaigns/refugee-campaign/fortress-europe/>); The Migrant's Files project (<http://www.themigrantsfiles.com/>); or the more recent Deaths at the Borders Database (<http://www.borderdeaths.org/>).

51 Bouwman, E. (2018) *Extraterritorial Border Practices and Migration - A case study of the Spanish extraterritorial border regime*. Master's thesis, Leiden University. <https://openaccess.leidenuniv.nl/bitstream/handle/1887/63959/Bouwman%2C%20Emma-S2070561-MA%20The-sis%20POWE-2018.pdf?sequence=1>

- At the peak of the European migration 'crisis' in 2015 and just after the shock of press coverage of deadly shipwrecks of the Libyan coast in April that year,<sup>52</sup> the EU, under a new Action Plan (see below) launched its first official military operation of migration management, targeting the smuggling (and trafficking) of people from Libya to the EU. The operation was called **EUNAVFOR Med** (European Union Naval Force Mediterranean) – also known as Operation **Sophia** and established at the peak of the migration 'crisis'.<sup>53</sup>
- In February 2016, Europol was tasked with strengthening its capabilities and launched the **European Migrant Smuggling Centre** (EMSC). (These last two initiatives are explored in more detail below.)
- Frontex launched Operation **Themis** as a successor to Triton in February 2018 with 10 ships operating for one year up to 24 miles off Italy's Adriatic coastline. Its mandate is to assist and rescue migrants, but the central focus of the operation is law enforcement with the aim of cracking down on criminal activities, such as drug smuggling, and collecting intelligence to stop terrorists and foreign fighters from entering the EU. Interestingly 'disruption of the smuggling business model' is not one of its aims.
- More generally, during the period 2015-2018, the EU (excluding individual states' initiatives and allocations, which are considerable) has dedicated almost €22 billion to actions related to migration both inside and outside the EU. Some of this is directly related to combat migrant smuggling as well as addressing the 'root causes' of migration.<sup>54</sup>

## The EU Action Plan against migrant smuggling (2015-2020)

The *EU Action Plan against Migrant Smuggling*<sup>55</sup> was adopted by the European Commission in late May 2015 as a detailed elaboration of the *European Agenda on*

*Migration* published the previous month, amid a sudden surge in movements of migrants to the EU<sup>56</sup> and in the immediate aftermath of the deaths at sea over the course of a few days in April of some 1,200 migrants. At the time, senior Commission officials spoke of a 'collective European sense of urgency',<sup>57</sup> and the need for 'swift and determined action'.<sup>58</sup>

The Plan's introduction noted that the Agenda had identified the fight against migrant smuggling as a priority in preventing the exploitation of migrants by criminal networks and reducing incentives to irregular migration. The Agenda set a goal of transforming migrant smuggling networks from 'low risk, high return' operations into 'high risk, low return' ones.

### Migrants as 'goods'

While referring to smugglers operating in 'ruthless criminal networks', the plan asserted that smugglers 'treat migrants as goods', similar to the drugs and firearms that are trafficked along the same routes.

The plan 'set out clear measures to counter and prevent migrant smuggling, including revising smuggling legislation, destroying smuggler vessels and stepping up the seizure and recovery of criminal assets, whilst ensuring full respect for and protection of the human rights of migrants'.<sup>59</sup>

It has four areas of focus:

- Enhanced police and judicial response;
- Improved gathering and sharing of information;
- Enhanced prevention of smuggling and assistance to vulnerable migrants; and
- Seeking stronger cooperation with third countries.

These objectives and areas of focus are borne out in much of the EU's subsequent smuggling-related activities, such as Operation Sophia and the EMSC (see below).

In September 2017, the Commission reported<sup>60</sup> that the fruits of the Action Plan included hundreds of investigations and arrests of smugglers; the population

52 Faiola, A. (2015) *U.N. estimates up to 850 migrants perished in capsized boat off Libya*. The Washington Post. [https://www.washingtonpost.com/world/un-says-between-800-and-850-migrants-died-in-boat-capsizing-off-libya/2015/04/21/a8383770-e803-11e4-9767-6276fc-9b0ada\\_story.html?utm\\_term=.d41e3c963901](https://www.washingtonpost.com/world/un-says-between-800-and-850-migrants-died-in-boat-capsizing-off-libya/2015/04/21/a8383770-e803-11e4-9767-6276fc-9b0ada_story.html?utm_term=.d41e3c963901)

53 Abridged from: Van Liempt, I. op. cit.

54 European Commission (2017) *Draft EU Budget 2018 – Questions and Answers*. Fact sheet. [http://europa.eu/rapid/press-release\\_MEMO-17-1430\\_en.htm](http://europa.eu/rapid/press-release_MEMO-17-1430_en.htm)

55 European Commission (2015) op. cit.

56 There were more than 1.8 million irregular border crossings into the EU in 2015, an increase of 546 percent over 2014. (Source: Frontex, cited in: European Parliament – Legislative Train Schedule – Towards a New Policy on Migration – Action Plan against Migrant Smuggling. <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-action-plan-against-migrant-smuggling>)

57 High Representative/EC Vice President Federica Mogherini and Commissioner Dimitris Avramopoulos cited in: European Commission (2015b) *Joint Foreign and Home Affairs Council: Ten-point action plan on migration*. Press release. [http://europa.eu/rapid/press-release\\_IP-15-4813\\_en.htm](http://europa.eu/rapid/press-release_IP-15-4813_en.htm)

58 European Commission (2015) op. cit.

59 European Parliament – Legislative Train Schedule. op. cit.

60 European Council (2017) *Communication from The Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on the Delivery of the European Agenda on Migration*. [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927\\_communication\\_on\\_the\\_delivery\\_of\\_the\\_eam\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170927_communication_on_the_delivery_of_the_eam_en.pdf)

of databases with details of suspicious vessels and individuals as well as the destruction of hundreds of smuggler vessels. Additionally, it cited increased cooperation and information sharing between entities and the training of over 24,000 civilian and military security forces, including the Libyan Coast Guard.

Many analysts have raised doubts about the Action Plan and the overall effectiveness of the EU's response to the migration crisis, particularly with regard to its protection components, suggesting that the increased fatality rates among those attempting to cross the Mediterranean in the last few years are 'indicative of the failed humanitarian dimensions of anti-smuggling initiatives that have been so central to the framing of developments in the policy field to date.'<sup>61</sup>

Recent research involving interviews with many migrants goes even further in its critique of EU policy:

*“Our research participants tellingly emphasise how, far from relieving a situation of uncontrolled movement, EU states are implicated in the production of such movements as well as in smuggling operations, in terms that perpetuate harms for people on the move.”<sup>62</sup>*

## Operation Sophia

In mid-May 2015, the EU Council approved the Crisis Management Concept for a military operation to disrupt the business model of migrant smuggling and trafficking networks in the Southern Central Mediterranean. This was passed in the context of a rapidly escalating 'crisis' of mass movement of refugees and migrants by land and sea into Europe – all irregular and mostly with facilitation by smugglers.

In June 2015, as part of the Common Security and Defence Policy (CSDP) the EU launched a military operation in the Southern Central Mediterranean (EUNAVFOR MED, also known as Operation Sophia). The aim of this operation is to identify, capture, and dispose of vessels and enabling assets that are used, or suspected of being used, by migrant smugglers or human traffickers. Sophia's naval and air assets patrol the high seas off the coast of Libya to Italy, gathering information, rescuing migrants, and

destroying boats used by smugglers. In early October 2015, UN Security Council Resolution 2240,<sup>63</sup> additionally authorised international naval forces to intercept migrant smuggling vessels off the coast of Libya for the purposes of inspection.

## Disruption deficit

In May 2016, a report by the UK House of Lords' European Union Committee concluded that Operation Sophia did not 'in any meaningful way deter the flow of migrants, disrupt the smugglers' networks, or impede the business of people smuggling on the central Mediterranean route'.<sup>64</sup> This was partly because of issues identified earlier in this paper – in particular that unlike drugs, the 'cargo' of human smugglers is vulnerable or at-risk humans, including women and children – sometimes infants. We see too the attempt to weld two very different aspects of policy under one mission – namely the legal and security-related interdiction of smugglers and the humanitarian rescue of tens of thousands of smuggled migrants.

A follow-up report issued by the same committee in July 2017 went further, saying that the operation 'failed to achieve its objective of "contributing to the disruption of the business model of human smuggling and trafficking networks in the Southern Central Mediterranean,"'<sup>65</sup> even if it saved lives (reportedly 33,000 between June 2015 and July 2017). But it saved lives while also bringing those it saved to Europe – equivalent, arguably, in the war on drugs to failing to halt trafficking while facilitating the confiscated narcotics to arrive at their intended countries of destinations: a contradiction by any reckoning although rarely highlighted in the complex ethical and political minefield migrant smuggling issues raise. Another sad irony is that an unintended consequence of Operation Sophia's destruction of smugglers' boats has been that smugglers have adapted their practices, 'sending migrants to sea in unseaworthy vessels, resulting in more deaths'.<sup>66</sup>

## 'Too late'

The House of Lords also found that once the boats using the central Mediterranean route had left Africa's shores it was already 'too late', that naval missions were the wrong tool for tackling 'this dangerous, inhumane and unscrupulous business' and that, 'future UK and EU action should focus on tackling people smuggling in source and transit countries, and supporting sustainable economic development and good governance in these countries'.<sup>67</sup>

61 Perkowski, N. & Squire, V. op. cit.

62 Ibid.

63 United Nations (2015) Adopting Resolution 2240 (2015), Security Council Authorizes Member States to Intercept Vessels off Libyan Coast Suspected of Migrant Smuggling. Press release. <https://www.un.org/press/en/2015/sc12072.doc.htm>

64 House of Lords (2016) Operation Sophia, the EU's naval mission in the Mediterranean: an impossible challenge. <https://publications.parliament.uk/pa/ld201516/ldselect/lducom/144/144.pdf>

65 House of Lords (2017) Operation Sophia: a failed mission. <https://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-external-affairs-subcommittee/news-parliament-2017/operation-sophia-follow-up-publication/>

66 Ibid; See also: Ruhayem, R. (2017) Are migrants paying price as EU targets smugglers in the Med? BBC News. <https://www.bbc.com/news/world-europe-40706957>

67 House of Lords (2017) op. cit.



The EU has thus been caught up in a 'vicious circle' in which a growing number of migrant border deaths has resulted in demands to combat smuggling and increase border patrolling, which forces refugees and other migrants to use more dangerous and longer routes, which means more people get injured or die while crossing borders. This in turn leads to more outrage and calls for more stringent border controls.<sup>68</sup>

## Europol and the EMSC

Recognising the need for an enhanced and coordinated response from European law enforcement agencies to fight what they call 'the facilitation of illegal immigration', Europol was tasked with strengthening its capabilities and launched the European Migrant Smuggling Centre (EMSC) in February 2016 as 'a major element of the EU's response to the migration crisis that began to unfold in 2015'.<sup>69</sup>

That migrant smugglers are, no less than drug traffickers, seen a deserving target of a 'war', is clear from the language used by the EMSC:

*“Ruthless and violent criminals are increasingly providing smuggling services to irregular migrants to evade border controls, migration regulations and visa requirements. Most irregular migrants resort to the assistance of profit-seeking smugglers. With improved border controls, migrants are deterred from attempting to illegally cross borders by themselves and are diverted into the hands of smugglers who put migrants' lives at serious risk and therefore pose a security challenge to the internal security of the European Union.”<sup>70</sup>*

## Achievements

Noting that over 90 percent of migrants who reach the EU use a smuggling network, and that smugglers are earning significant profits from mass migration, making migrant smuggling the fastest growing criminal sector, the EMSC

reported it had identified 17,459 'new suspected migrant smugglers', initiated 2,057 investigations of smuggling networks – consisting of between two and more than 20 individuals – and monitored more than 500 'vessels of interest' in its first year of operations.<sup>71</sup>

A further 1,700 new cases were initiated, and 1,050 vessels of interest reported in 2017, while dozens of suspected members of organised criminal groups involved in migrant smuggling or associated activities such as document fraud (together with social media, a key area of focus for the EMSC), were arrested in Europol-supported operations in various EU states.<sup>72</sup>

In February 2017, Dimitris Avramopoulos, the EU's top migration official who, it will be recalled, declared Europe's war on smugglers two years previously, said the EMSC had 'played a central role for the EU and its immediate neighbourhood in successfully fighting, disrupting and apprehending criminal migrant smuggling networks'.<sup>73</sup>

## Rising fatalities

In 2015 Avramopoulos stressed the new war was premised on the conviction that 'one life lost at sea was too many'. Yet the wake of Europe's robust anti-smuggler response in the Mediterranean is now strewn with the bodies of the drowned: migrant flows across the sea may have plummeted, but, because of the diminished search and rescue presence off the Libyan coast, the fatality rate has recently soared: one of every 18 people who tried to reach Europe between January and July 2018 died or went missing en route and in September, that proportion soared to one in five – the highest on record<sup>74</sup>. The fatality rate for January-July 2017 was one in 42.<sup>75</sup>

## 4.4: The Khartoum Process

In October 2014, prompted by concerns over, inter alia, 'organised criminal networks that exacerbate human rights violations of migrants, refugees and asylum seekers', states within the Horn of Africa – a major source of mixed migration – formally agreed to: ratify international conventions on migrant smuggling and trafficking in persons; address the socio-economic causes of migration; strengthen law enforcement efforts and

68 Van Liempt, I. op. cit.

69 EMSC Executive Director Rob Wainwright, quoted in: Europol (2018) op. cit.

70 Ibid. (Head of EMSC Robert Crepinks).

71 Europol (2017) EMSC – First Year Activity Report. <https://www.europol.europa.eu/publications-documents/emsc-first-year-activity-report>

72 Europol (2018) op. cit.

73 Europol (2017) Europol's European Migrant Smuggling Centre: One Year On. Press release. <https://www.europol.europa.eu/newsroom/news/europol%E2%80%99s-european-migrant-smuggling-centre-one-year>

74 Villa, M. (2018) Sea Arrivals to Italy: The Cost of Deterrence Policies. Italian Institute for International Political Studies. <https://www.ispionline.it/en/publication/sea-arrivals-italy-cost-deterrence-policies-21367>

75 Crisp, J. (2018) One in 18 migrants die crossing the Mediterranean as death rate soars amid divisions over EU rescue policy. The Telegraph. <https://www.telegraph.co.uk/news/2018/09/03/migrant-death-rate-mediterranean-rises-despite-fewer-crossings>; Between Jan 1 and Dec 7 2018 some 2,160 people died or went missing on the Mediterranean (source: <https://data2.unhcr.org/en/situations/mediterranean>). See also: Dearden, L. (2017) Europol report hails 'success' against people smuggling despite more refugees dying than ever before. The Independent. <https://www.independent.co.uk/news/world/europe/europol-eu-people-smuggling-success-refugees-dying-killed-mediterranean-migrant-crisis-border-a7598421.html>

cooperation with international organisations interested in developing states' capacities to combat migrant smuggling and trafficking in persons; and improve efforts to protect victims.<sup>76</sup>

The following month, ministers from Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Somalia, South Sudan, Sudan, and Tunisia met with their counterparts from the 28 EU countries as well as the European and African Union commissioners responsible for migration and development, and the EU High Representative. Collaboratively, they launched the EU-Horn of Africa Migration Route Initiative,<sup>77</sup> also known as the Khartoum Process, a policy platform which aims to combat trafficking in persons and smuggling of migrants from the Horn of Africa to Europe and within the region. The Khartoum Process provides a political forum for facilitating the practical measures that must be achieved at international, national, and regional levels to effectively combat trafficking in persons and smuggling of migrants .

### The EU's 'dirty hands'

The European Union (EU) has also provided substantial financial assistance<sup>78</sup> for regional efforts to combat trafficking in persons and migrant smuggling within the context of the Khartoum Process.<sup>79</sup> In the case of Sudan, which reportedly received some \$200 million of such funds, the plight of migrants reportedly worsened as a result of this largesse: 'they are increasingly trapped, living in a perpetual state of fear and exploitation in this key transit country.'<sup>80</sup> Most concerning are the Rapid Support Forces (RSF), which Sudan's president, al-Bashir, has reportedly charged with patrolling Sudan's borders. Previously known as the murderous Janjaweed, meaning 'devils on horsebacks' – the RSF allegedly terrorize civilians across the country, including in Darfur, Blue Nile and South Kordofan. In northern Sudan, they are reportedly, 'using arms intended for warfare to keep

migrants from crossing the desert en route to Europe'.<sup>81</sup> Rocket-propelled grenades (RPGs), anti-aircraft missiles and machine guns are all part of the RSF arsenal and in September 2017, the RSF claimed to have killed 28 smugglers in clashes along the border with Libya.<sup>82</sup> It is unclear how many migrant were killed in the clashes as RSF do not disclose these details. The 'European Union is quietly getting its hands dirty, stanching the human flow, in part, by outsourcing border management to countries with dubious human rights records'.<sup>83</sup> However, the EU continues to insist it's not the Sudanese that received any funds, but international organisations (UN, NGOs).<sup>84</sup>

### Wrong direction?

The extent to which the inter-governmental commitments, meetings, workshops and declarations have led to any positive change on the ground remains unclear. Some argue that the Khartoum Process's premises and the line of action taken by participating governments are not only unlikely to achieve the desired outcomes, but, more importantly, may pose a risk to the better governance and development of the Horn of Africa.<sup>85</sup> Others have called for a change in conceptual direction:

“Key to this alternative approach, is a shift in focus onto the political context in which migration takes place, rather than the criminality that it attracts. This shift acknowledges the lack of choices that people are confronted with throughout their journeys, a lack of choice that is driven by structural factors that cannot be resolved without a deeply political engagement that begins to dismantle them.<sup>86</sup>”

However, during 2017 and into 2018 there was a marked reduction of migrants from the Horn of Africa arriving on

76 African Union (2014) Khartoum Declaration on AU-Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants. [https://au.int/sites/default/files/pages/32899-file-6.\\_au-hoai-declaration\\_2014\\_finaladopted.pdf](https://au.int/sites/default/files/pages/32899-file-6._au-hoai-declaration_2014_finaladopted.pdf)

77 Declaration of the Ministerial Conference of the Khartoum Process (EU-Horn of Africa Migration Route Initiative) <http://italia2014.eu/media/3785/declaration-of-the-ministerial-conference-of-the-khartoum-process.pdf>

78 Closely related to the Khartoum initiative were the inter-governmental summit meetings in Valletta (November 2015 and February 2017) and a raft of new initiatives and programmes under the EU Migration Partnership Framework with third countries.

79 By early 2017 the allocated finance for the Khartoum Process in East and Horn of Africa was almost up to one billion euros through various pipeline funding allocations.

80 Chandler, C. (2018) *Inside the EU's flawed \$200 million migration deal with Sudan*. IRIN News. <https://www.irinnews.org/special-report/2018/01/30/inside-eu-s-flawed-200-million-migration-deal-sudan>; see also: Siegfried, K. (2016) *Sudan and Eritrea crackdown on migrants amid reports of EU incentives*. IRIN News. <http://www.irinnews.org/news/2016/05/25/sudan-and-eritrea-crackdown-migrants-amid-reports-eu-incentives>

81 Fanack on-line. (2018). *Follow the Money: EU Accused of Funding Sudanese Militias in Migrant Crackdown*. March 1st 2018. <https://fanack.com/international-affairs/eu-funding-sudanese-militias/>

82 Al Jazeera (2017). *Sudan's RSF unit accused of abuses against migrants*, by Hiba Morgan. 17 Nov 2017 <https://www.aljazeera.com/blogs/afri-ca/2017/11/sudan-rsf-unit-accused-abuses-migrants-171117133237654.html>

83 Kingsley, P. (2018) *By Stifling Migration, Sudan's Feared Secret Police Aid Europe*. New York Times. <https://www.nytimes.com/2018/04/22/world/africa/migration-european-union-sudan.html>

84 Fanack on-line. (2018). *Follow the Money: EU Accused of Funding Sudanese Militias in Migrant Crackdown*. March 1st 2018. <https://fanack.com/international-affairs/eu-funding-sudanese-militias/>

85 Reitano, T. (2016) *The Khartoum Process: A sustainable response to migrant smuggling and trafficking?* Institute for Strategic Studies. <https://issafrica.org/research/policy-brief/the-khartoum-process-a-sustainable-response-to-human-smuggling-and-trafficking>

86 Hovil, L. & Oette L. (2017) *Tackling the Root Causes of Human Trafficking and Smuggling from Eritrea - The need for an empirically grounded EU policy on mixed migration in the Horn of Africa*. SIHA Network/SOAS/International Refugee Rights Initiative. <https://www.soas.ac.uk/human-rights-law/reports-research-projects-and-submissions/file125174.pdf>

the shores of Italy. According to IOM data<sup>87</sup> 15.5 percent of all irregular arrivals in Italy in 2016 were Eritreans (11.4%, over 20,000 people) and Sudanese (5.1%, over 9,000 people). In 2017, between January and July, just four percent of irregular arrivals in Italy were Eritrean (4,500 people) and four percent were Sudanese (c.4,000 people). The decline continued in 2018: in the first five months of the year just 1,810 Eritreans and 536 Sudanese nationals were recorded by the Italian interior ministry.<sup>88</sup>

This is a substantial reduction that cannot automatically be attributed to interventions or interdictions without more analysis and understanding of changes on the ground, but it may be due to increased police control and immigration management, including as a result of involvement in the Khartoum Process.

## 4.5: Other European responses

New strategies and policies are evolving rapidly as individual and groups of EU member states attempt to respond to migrants (and refugees) on the move. Policies that were previously considered unpalatable are becoming established practice<sup>89</sup> as some countries find themselves under increasing pressure to 'stem the tide' of irregular arrivals, even when the 'tide' quickly receded after the height of the 'migrant crisis'. Relations between some governments, the EU, Frontex, NGOs and private agencies seeking to assist maritime migrants have become accusatory and contentious.<sup>90</sup>

After the EU-Turkey Statement of March 2016 (discussed in further detail below) the flows of refugees and migrants through Turkey to Greece along the Eastern Mediterranean route were almost entirely eliminated,<sup>91</sup> and attempts to block or restrict the Central Mediterranean route, departing from Libya, have had a

dramatic effect on both flow and fatality rates.

### Italy and Libya

The February 2017 Memorandum of Understanding (MOU) between Italy and Libya's UN-backed Government of National Accord (GNA) was an important turning point. Rome pledged training, equipment and investment to help the Tripoli government improve border security and combat the smuggling of people. It engaged local government in smuggling hubs, promising investment in return for help with migration control. The agreement was seen to echo the EU-Turkey deal that closed the Balkan migration route.

Italy leads the efforts as the main gateway to EU. In March 2017 the EU and Italian government made deals with Libya promising them considerable sums for 'equipment'<sup>92</sup> to interdict and stop migrant smuggling across the Mediterranean while at the same time making ill-fated plans to set up processing centres for asylum seekers on mainland Africa, including Libya.<sup>93</sup>

In the summer of 2017 Italy threatened to close its ports to 'rescued' migrants if other countries in Europe were not more active in their support of its migrant 'crisis'.<sup>94</sup> In July, Italy drew up a code of conduct for NGOs operating in the Mediterranean, banning them from entering Libyan waters to rescue migrants, and obliging them to accept Italian inspections for possible human trafficking.<sup>95</sup> Several NGOs refused to sign up.<sup>96</sup>

In August 2017, Luigi Di Maio, who led the Five Star Movement, the largest individual party in the Italian parliament after the 2018 election, called for 'an immediate stop to the sea-taxi service' bringing migrants to Europe.<sup>97</sup> By March 2018, and after the electoral success of overtly anti-migrant populist parties, active

87 Various data sets viewed at <http://migration.iom.int/europe?type=arrivals>

88 Sudan Tribune (2018) *Eritrean and Sudanese migrants continue to arrive in Italy with new records*. <http://www.sudantribune.com/spip.php?article65448>

89 One example is the pushbacks and violent treatment meted out to migrants in Ventimiglia, on the border between France and Italy. See: MSF (2018) *Harmful Borders - An analysis of the daily struggle of migrants as they attempt to leave Ventimiglia for northern Europe*. [https://www.msf.fr/sites/default/files/harmful\\_borders\\_190218.pdf](https://www.msf.fr/sites/default/files/harmful_borders_190218.pdf)

90 Wintour, P. (2017) *NGO rescues off Libya encourage traffickers, says EU borders chief*. The Guardian. <https://www.theguardian.com/world/2017/feb/27/ngo-rescues-off-libya-encourage-traffickers-eu-borders-chief>; Dearden, L (2017) *EU accused of 'wilfully letting refugees drown' as NGOs face having rescues suspended in the Mediterranean*. The Independent. <https://www.independent.co.uk/news/world/europe/refugee-crisis-ngo-rescue-ships-mediterranean-sea-italy-libya-eu-code-of-conduct-deaths-2300-latest-a7866226.html>

91 European Commission (2017) *The EU and the Migration Crisis*. <http://publications.europa.eu/webpub/com/factsheets/migration-crisis/en/>. Additionally, according to official reports quoted by IOM, Turkish authorities apprehended/rescued over 37,000 migrants and arrested 118 'organisers' (i.e. smugglers). See: [http://migration.iom.int/docs/2016\\_Flows\\_to\\_Europe\\_Overview.pdf](http://migration.iom.int/docs/2016_Flows_to_Europe_Overview.pdf)

92 In what is likely to be the first of many such payments, the European Commissioner for Migration and Home Affairs Dimitris Avramopoulos stated in late March 2017, that of the €200 million the EU set aside last month to fight smuggling in the central Mediterranean route, €90 million was earmarked for Libya.

93 Scherer, S. (2017) *Italy, EU prep aid for Libya's fight against people smuggling*. Reuters. <http://www.reuters.com/article/us-europe-migrants-italy-libya-idUSKBN16R1WP>; In July 2018, Libya rejected the planned processing centres. On the same day, Italy refused to accept people rescued at sea: The Telegraph (2018) *Libya refuses to accept proposed EU migrant processing centres*. <https://www.telegraph.co.uk/news/2018/07/20/libya-refuses-accept-proposed-eu-migrant-processing-centres/>

94 BBC News (2017) *Europe migrant crisis: Italy threatens to close ports as ministers meet*. <http://www.bbc.com/news/world-europe-40470102>

95 European Parliament (2017) *Parliamentary Questions - Code of conduct for NGOs in the Mediterranean*. [http://www.europarl.europa.eu/doceo/document/E-8-2017-005646\\_EN.html](http://www.europarl.europa.eu/doceo/document/E-8-2017-005646_EN.html)

96 Zalan, E. (2017) *NGOs divided by Italy's new rescue code*. EU Observer. <https://euobserver.com/migration/138656>

97 Reuters (2018) *Italian prosecutors widen investigation to include MSF over migrant rescues*. <https://www.reuters.com/article/us-italy-migrants-medecins-sans-frontier-idUSKBN1AL0HZ?il=0>

obstruction of sea rescue and denial of disembarkation was government policy.

In June 2018, Italy and Libya reactivated a dormant agreement that could see the north African country receive billions of euros from its former coloniser in return for allowing migrants to be returned to its territory and preventing others from departing from its Mediterranean shores.<sup>98</sup>

In early December, MSF announced its rescue vessel Aquarius had been forced to end operations in the Mediterranean 'as Europe condemns people to drown'. The ship had helped almost 30,000 people in international waters between Libya, Italy and Malta since February 2016. 'Not only has Europe failed to provide search and rescue capacity, it has also actively sabotaged others' attempts to save lives,' the medical charity said,<sup>99</sup> as Italian Interior Minister Matteo Salvini, who has overtly emulated Australia's 'stop the boats' policy, tweeted with joy: 'Fewer sailings, fewer landings, fewer deaths. That's good.'<sup>100</sup>

### Europe's 'collusion' in rights abuses

During 2017 and 2018 raft of European agreements have empowered the Libyan Coast Guard to intercept refugees and migrants at sea, including in international waters, and ferry them back to Libya. A 2018 Amnesty International report accused European governments of knowingly colluding in human rights abuses within Libya while 'blindly pursuing their overarching policy of restricting migrant flows into the continent'.<sup>101</sup>

The relationship in Libya between the internationally recognised government (GNA) and militias where migrant smuggling itself is an important source of power and finance, is turbulent and practiced with little or no regard to human rights.<sup>102</sup> The fact that the EU funds and encourages interception and return of refugees and migrants by the Libyan Coast Guard is nothing short of extraordinary. A media article in February 2019 stated that, 'as smuggling routes close down in Libya, partly because of European Union spending aimed at decreasing arrivals to Italy, militias who once offered a service in

moving people are increasingly turning to violence and torture to make a profit.'<sup>103</sup>

It could be said that after earlier failures to disrupt the smuggling model or curtail smuggling itself, and in the desperation to stop irregular movement into Europe, member states and the Union itself looked to different mechanisms to achieve their aims. As mentioned, many of these would have been previously unpalatable and unacceptable, but one of the new characteristics of the effort to frustrate migrant smuggling has been the normalisation of tactics that often contravene European values and, in some cases, laws. The EU's relationship with Libya and its general externalisation programme (see below) is emblematic of this trend.

## 4.6: Externalising the war on smugglers

As this paper has already noted, efforts to combat migrant smuggling are closely entwined with policies explicitly designed to prevent irregular movement. In the case of the European Union this reflects changing political priorities resulting from growing public concern about the arrival, reception and integration of refugees and migrants in mixed flows, who are predominantly facilitated by smugglers. Pressure to stem such flows took on especial urgency after the 2015-2016 surge when 'the Schengen common travel area and the Common European Asylum System (CEAS) risked a complete meltdown. ...[O]ne million refugees landed in Greece and Italy and then engaged in secondary movements throughout the European Union.'<sup>104</sup>

### Skewed priorities?

According to some, this changing policy environment reflects the fact that European governments have 'prioritized countering smuggling over rescue operations in the central Mediterranean, exploring ways to outsource border control and asylum processing to transit countries outside of Europe'.<sup>105</sup>

At a summit in June 2018, EU leaders made a number of recommendations about the direction of the bloc's

98 Bellamy, D. (2018) *Italy promises billions of euros to Libya if it accepts the return of migrants*. Euronews. <https://www.euronews.com/2018/07/08/italy-promises-billions-of-euros-to-libya-if-it-accepts-the-return-of-migrants>

99 MSF (2018) *Aquarius forced to end operations as Europe condemns people to drown*. <https://www.msf.org/aquarius-forced-end-operations-europe-condemns-people-drown>

100 BBC News (2018) *MSF ship Aquarius ends migrant rescues in Mediterranean*. <https://www.bbc.com/news/world-europe-46477158>

101 Amnesty International (2017a) op. cit.; see also: Giuffrida, A. & Tondo, L. (2018) *Deaths at sea expose flaws of Italy-Libya migration pact*. The Guardian. <https://www.theguardian.com/world/2018/jul/23/mother-and-child-drown-after-being-abandoned-off-libya-says-ngo>

102 Reitano, T. & Micallef, M. (2017) *Migrant smuggling and Libya's political end game*. Institute for Security Studies/ Global Initiative against Transnational Organised Crime. <http://globalinitiative.net/wp-content/uploads/2018/01/2017-12-13-pamphlet-migration.pdf>

103 Hayden, S. (2019) *The Families of Migrants Held Hostage Are Using Facebook to Raise Money for Smugglers' Ransoms*. TIME. Available at [http://time.com/5510517/facebook-smuggling-libya-ransoms/?utm\\_source=NEWS&utm\\_medium=email&utm\\_content=2nd+section+4th+story+time&utm\\_campaign=HQ\\_EN\\_therefugeebrief\\_external\\_20190206](http://time.com/5510517/facebook-smuggling-libya-ransoms/?utm_source=NEWS&utm_medium=email&utm_content=2nd+section+4th+story+time&utm_campaign=HQ_EN_therefugeebrief_external_20190206)

104 Maiani F. (2018) 'Regional Disembarkation Platforms' and 'Controlled Centres': *Lifting the Drawbridge, Reaching out Across the Mediterranean, or Going Nowhere?* EU Immigration and Asylum Law and Policy. <http://eumigrationlawblog.eu/regional-disembarkation-platforms-and-controlled-centres-lifting-the-drawbridge-reaching-out-across-the-mediterranean-or-going-nowhere/>

105 Amnesty International (2017a) op. cit.

migration policies:<sup>106</sup>

- Focus on effective control of external borders;
- Central Mediterranean route: Intensify efforts to stop smugglers operating out of Libya, and support to Italy in a step up of its support for the Libyan Coast Guard;
- Ensure swift returns and prevent the development of new sea or land routes on the Eastern Mediterranean route;
- Establish regional disembarkation platforms in transit countries for the purpose of rapid asylum processing (see below);
- Include a dedicated external migration management window specifically geared towards stemming irregular migration flows; and
- Take all necessary internal legislative and administrative measures to counter secondary movements of asylum seekers between Member States.

### Regional disembarkation platforms

Euphemistic jargon for paying African countries to process the asylum claims of people rescued or intercepted on the Mediterranean, regional disembarkation platforms (RDPs) as a proposed 'game-changing' policy, were met with widespread condemnation after the June summit, with their very legality being called into question, notably with regard to the prevailing conditions in Libya and the sacrosanct principle of *non-refoulement*.<sup>107</sup>

*“The RDP concept is meant to complete an already over-packed externalization toolkit, put together mostly through informal measures in order to minimize judicial and democratic accountability. (...) Would RDPs be mere processing platforms or, to put it crudely, would they turn their hosts into Europe’s dumping ground for unwanted migrants?”*<sup>108</sup>

By October, the whole idea appeared to have been shelved, with European Commission President Jean-Claude Juncker saying it 'was no longer on the

agenda and never should have been'.<sup>109</sup> Yet the following month it emerged that lawyers working at the European Parliament had given cautious legal approval to the plan, partly on the ground that EU law does not apply to migrants rescued on the high seas.<sup>110</sup> At the same time, a senior EU official said discussions on the matter were 'proceeding in Council', despite the lack of enthusiasm from potential safe country partners, notably Tunisia and Morocco, in hosting RDPs.<sup>111</sup>

### Curtailing departures

Outside of the EU summit's recommendations, but reinforcing these approaches, 2018 has seen intense bilateral discussions between member states. For example, France and Germany issued the Meseberg Declaration<sup>112</sup> that calls for changes on a range of issues including migration. The declaration does not explicitly address the idea of external asylum processing but emphasizes the need for increased support and cooperation with origin and transit countries, building on models such as the EU-Turkey Statement with the aim of avoiding departures to Europe, and improved protection of the EU's external borders.

### Merkel's U-turn

In a bilateral meeting between German Chancellor Angela Merkel and Italian Prime Minister Giuseppe Conte in June 2018,<sup>113</sup> Merkel committed to work with Italy to reduce the numbers of refugees entering the EU. The two agreed on the need to boost Frontex, and that asylum applications should be processed in countries of origin or transit, before would-be asylum-seekers enter the EU. In a dramatic reversal of her celebrated public stance during 2015, Merkel also joined with Conte to agree that asylum applications should be processed in origin or transit countries.<sup>114</sup>

In May 2018, Austrian Chancellor Sebastian Kurz, who was elected on an anti-immigration platform, suggested EU border guards should be sent to North Africa to block migrant boat departures and send migrants back to their countries of origin.<sup>115</sup> Kurz is backed by several other EU states, including Germany and Italy, in his push for European officials to process asylum claims outside Europe.

106 For full text of conclusions, see: <https://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final/>

107 See, for example: Ward, M. (2018) *Why the EU can't outsource its migration crisis*. Politico; and, for a more detailed legal perspective: Maiani, F. op. cit.

108 See, for example: Ward, M. (2018) *Why the EU can't outsource its migration crisis*. Politico; and, for a more detailed legal perspective: Maiani, F. op. cit.

109 Reuters (2018) Juncker says North Africa migrant 'camps' not on EU agenda. <https://www.reuters.com/article/us-europe-migrants-africa/juncker-says-north-africa-migrant-camps-not-on-eu-agenda-idUSKCN1N01TU>

110 Nielsen, N. (2018) *EP lawyers back EU plans for migrant centres in Africa*. EU Observer. <https://euobserver.com/migration/143513>

111 Ibid

112 Federal Government of Germany (2018) Meseberg Declaration - Renewing Europe's promises of security and prosperity. Press release. <https://www.bundestkanzlerin.de/Content/EN/Pressemitteilungen/BPA/2018/2018-06-19-meseberg-declaration.html>

113 DW (2018) *Angela Merkel promises to support Italy on migration after Giuseppe Conte meeting in Berlin* <https://www.dw.com/en/angela-merkel-promises-to-support-italy-on-migration-after-giuseppe-conte-meeting-in-berlin/a-44284821>

114 Ibid.

115 Agerholm, H. (2018) *Austrian chancellor says EU border guards should patrol North Africa to stop refugees leaving for Europe*. The Independent. <https://www.independent.co.uk/news/world/europe/austria-chancellor-eu-border-guards-north-africa-sebastian-kurz-mediterranean-refugees-migrants-a8371611.html>

According to some analysts putting 'boots on the ground' would be the 'apex' of the EU's growing externalization of migration controls. Meanwhile Frontex is currently being transformed into the European Border and Coast Guard, an agency with more money and manpower and a broad mandate, including the ability to make deals to operate in migration transit and origin countries.<sup>116</sup>

## The EU-Turkey Statement

Together with the EU's arrangements with Niger (see below), the deal struck in March 2016 between EU governments and Turkey to send back anyone irregularly arriving on the Greek islands is a classic example of policy action where the suppression of smuggling is inextricably embedded in a wider policy of limiting unwanted irregular flows and emblematic of the push for externalisation.

### Cash for migrants

The EU-Turkey Statement outsources to Turkey the responsibility over refugees and migrants trying to reach Europe.<sup>117</sup> In exchange, EU governments committed to provide funds of up to €6 billion to assist refugees in Turkey (up to the end of 2018). The deal included an understanding that Turkey will obtain visa liberalisation for Turkish citizens and negotiations for Turkey to join the EU will move forward. A direct result of the deal was that the Turkish authorities also clamped down on departures from Turkish coast and smugglers organising departures.

For some, the 98 percent reduction in the numbers of refugees and migrants arriving in Greece from Turkey was evidence of a successful policy. Gerald Knaus, of the European Stability Initiative, and one of the deal's architects, stated in January 2017: "If the EU-Turkey agreement is implemented in full, it will demonstrate that it is possible to control borders and at the same time respect the UN Refugee Convention, combining compassion and empathy with control and security concerns."<sup>118</sup>

### 'A horror story'

For others, though, by the EU-Turkey deal European member states have denied people the protection they need, resulting in people having to take greater risks and in the deterioration of their health. Furthermore, various legal analysts have challenged the legality of the deal under European law, arguing, *inter alia*, that Turkey cannot be considered a 'safe third country'.<sup>119</sup>

The Jesuit Relief Service has written that, "unfortunately, the true magic of the deal is that it made suffering and injustice invisible at Europe's borders," that gives policymakers have a justification not to act.<sup>120</sup> MSF stated that the deal has been, "not a success story, but a horror story, with terrible consequences for people's lives and health".<sup>121</sup>

Meanwhile, Amnesty International has repeatedly criticised the EU's broad externalising policies, stating that, "the use of aid, trade and other leverage to push transit countries, including some where widespread and systematic human rights violations against refugees and migrants have been documented, to implement stricter border control measures, in the absence of adequate human rights guarantees, risks trapping thousands of refugees and migrants in countries where they are exposed to serious human rights violations and abuses and where they have no access to effective protection".<sup>122</sup> From the perspective of international law, external migration policies are not necessarily unlawful, Amnesty claims, but expose refugees and migrants to significantly increased human rights risks.<sup>123</sup>

### Displaced, not disrupted

Arguably, a significant failure of those who designed the EU-Turkey deal was their presumption that such an agreement would target and eradicate migrant smuggling.<sup>124</sup> According to some, the closure of the maritime option meant that other smuggling routes, such as the land border between Greece and Turkey marked by the river Evros, reopened. There are "daily reports of people trying to cross through the river, reports of people

116 Davitti, D., Fries, M. & Walter-Franke, M. (2018) Gradations of externalisation: is the EU sailing towards offshoring asylum protection? University of Nottingham Human Rights Law Centre. <https://www.nottingham.ac.uk/hrlc/documents/fmu-policy-brief/pb-3-gradations-of-externalisation.pdf>

117 Details of the deal included: (a) Irregular migrants and asylum seekers crossing from Turkey to Greece whose application has been declared inadmissible will be returned to Turkey. Pending their registration and an assessment of the possibility of sending them back to Turkey, they must remain on the Greek islands. (b) For every Syrian returned to Turkey, another Syrian will be resettled directly from Turkey to Europe, with a cap of 72,000. The resettlement of Syrians in Europe is conditional on effective returns to Turkey and an end to new arrivals in Greece. (See: MSF (2017) One Year On from the EU-Turkey Deal: Challenging the EU's Alternative Facts [https://www.msf.org/sites/msf.org/files/one\\_year\\_on\\_from\\_the\\_eu-turkey\\_deal.pdf](https://www.msf.org/sites/msf.org/files/one_year_on_from_the_eu-turkey_deal.pdf))

118 European Stability Initiative (2017) On solid ground? Twelve facts about the EU-Turkey Agreement. <https://www.esiweb.org/pdf/ESI%20-%20Twelve%20facts%20about%20the%20EU-Turkey%20Agreement%20-%20January%202017.pdf>

119 Aygenc, B. & Orpen, C. (2018) The EU-Turkey Refugee Deal. Can Turkey be considered as a 'safe third country'? Public Seminar. <http://www.publicseminar.org/2018/04/the-eu-turkey-refugee-deal/>

120 Jesuit Relief Service (2018) Europe: The magic trick of the EU-Turkey deal. <https://reliefweb.int/report/greece/europe-magic-trick-eu-turkey-deal>

121 MSF (2017) *op. cit.*

122 Amnesty International (2017a) *op. cit.*

123 Amnesty International (2017b) Human Rights Risks of External Migration Policies. <https://www.amnesty.org/en/documents/pol30/6200/2017/en/>

124 European Parliament – Legislative Train Schedule Towards a New Policy on Migration – EU-Turkey Statement & Action Plan. <http://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan>

being found dead, reports of people left abandoned, and even serious allegations of *refoulements*. [...] At the same time, the Balkan route is still open and thriving under Europe's shut eyes".<sup>125</sup>

Despite criticism of the EU-Turkey deal there are little signs that EU leaders are ready to see a repeat of the flows that characterised movement and migrant smuggling from Turkey to Greece from 2014-2016. On the contrary, all the signs indicate the deal will at very least be continued and possibly extended into 2019 and beyond.

## The Niger experiment

### The southern border of Europe

'The border with Europe, in reality, is Niger and Chad, taking into account the power vacuum, the chaos there is in Libya,' Mahamadou Issoufou, the president of Niger recently observed, adding: 'Whoever holds Africa, holds Europe.'<sup>126</sup> In early 2018, a European ambassador made the same point, saying, 'Niger is now the southern border of Europe.'<sup>127</sup>

Three-quarters of all African migrants arriving by boat in Italy in recent years transited through Niger. Connecting West and North Africa, Niger is one of the poorest countries in the world and is now the biggest per capita recipient of EU aid in the world.<sup>128</sup> It is also surrounded by security threats: Libya lies to its north; Nigeria, where Boko Haram remains active, is adjacent to the east, and the Isis-linked Islamic State in the Greater Sahara is active to the north-west.

It has been called 'Europe's Migration Laboratory'.<sup>129</sup> The EU exchanged millions in development cooperation for the criminalisation of migrant smuggling and an effective clampdown on Agadez and Dirkou, two of the country's northernmost smuggling hubs.<sup>130</sup> In the EU's recent, rapid search for interventions that may stem the flow of West African refugees and migrants through the Sahara

Desert and into Libya, Niger has been celebrated and rewarded as a cooperative government.

### A worthy model?

Referred to recently by Federica Mogherini, EU's de facto foreign minister,<sup>131</sup> as the model for how other transit countries should manage migration, Niger was also described as the best performer of the five African nations who signed up to the EU Partnership Framework with Third Countries under the European Agenda on Migration – the plan that made development aid conditional on cooperation in migration control.<sup>132</sup> One senior EU representative described the country as the bloc's 'number one partner' and saw no divergence in EU-Niger interests on security, development or migration.<sup>133</sup>

The EU's Capacity Building Mission in Niger, EUCAP Sahel Niger, was established in 2012 to help draw up a coordinated strategy to counter the jihadi threat in Mali, but its mandate changed in 2016 to 'better control and address irregular migration'. In September 2018, the European Council extended the mandate for a further two years and approved a budget until then of some €63.4 million.<sup>134</sup>

### Focus on Agadez

Agadez has long been a byword for many kinds of smuggling and the EU has made the suppression of migrant smuggling from the desert city a central objective of its Niger engagement.

One of several pieces of legislation recently introduced in Niger under EU pressure, Law 36 criminalises migrant smuggling north of the central town of Agadez. Those convicted risk up to ten years in jail. A wave of arrests of smugglers and confiscations of their vehicles followed. But according to IOM's head of mission there, the crackdown in northern Niger is about more than Europe closing the door on African migrants or crushing migrant smuggling gangs.<sup>135</sup> According to some reports the implementation of the law with strong EU backing has directly contributed to significant reduction of refugees

125 Karakoulaki, M. (2018) *EU-Turkey deal: the burden on refugees in Greece*. Open Migration <https://openmigration.org/en/analyses/eu-turkey-deal-the-burden-on-refugees-in-greece/>

126 Quoted in: Maclean, R & Saley, O. (2018) *New terrorist threat as EU stance on migrants triggers disquiet in Niger*. The Guardian. <https://www.theguardian.com/global-development/2018/jun/27/lost-jobs-rising-extremism-eu-stance-migrants-bodes-ill-niger>

127 Quoted in: Howden, D. (2018) *Niger: Europe's Migration Laboratory*. Refugees Deeply. <https://www.newsdeeply.com/refugees/articles/2018/05/22/niger-europes-migration-laboratory>

128 The European Development Fund awarded \$731 million to Niger for the period 2014–20. A subsequent review boosted this by a further \$108 million.

129 Howden, D. op. cit.

130 Reitano, T. & Micallef, M. op. cit.

131 Mogherini is the High Representative of the European Union for Foreign Affairs and Security Policy

132 As well as Niger, partners include Nigeria, Senegal, Mali and Ethiopia. Details of the framework's developments can be found at: European Union (2017) *Fifth Progress Report on the Partnership Framework with third countries under the European Agenda on Migration*. [https://eeas.europa.eu/headquarters/headquarters-homepage/31673/fifth-progress-report-partnership-framework-third-countries-under-european-agenda-migration\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/31673/fifth-progress-report-partnership-framework-third-countries-under-european-agenda-migration_en)

133 Howden, D. op. cit.

134 European Council (2018) *EUCAP Sahel Niger: Council extends the mission for two years*. <https://www.consilium.europa.eu/en/press/press-releases/2018/09/18/eucap-sahel-niger-council-extends-the-mission-for-two-years/>

135 Ibid.

and migrants passing through the Sahara via Niger using smugglers.<sup>136</sup>

German Chancellor Merkel joined others in promising money and 'opportunities' for those who had previously made their living out of migrant smuggling. An Action Plan for Rapid Economic Impact in Agadez was created to support those who gave up smuggling with alternative business ventures. Only a small minority of the areas 5,000-plus smugglers have benefitted.<sup>137</sup> As one commentator wrote, the project is a tall order: 'there is no precedent for demolishing an informal economy in one of the world's poorest countries and replacing it with a formal model'.<sup>138</sup> Some 60 percent of Niger's GDP comes from the informal sector, according to the World Bank.<sup>139</sup>

### Unintended consequences

Instead of ending smuggling there are indications that the enforcement of the new laws has increased risks and costs for migrants and refugees, while offering higher and more diverse income opportunities for criminals and state officials. According to an in-depth investigation conducted by journalist Daniel Howden, who interviewed several smugglers, since the 2016 crackdown migration routes have simply changed while distances have doubled.

Furthermore, drivers carrying larger amounts of cash to pay off police and other officials attract bandits from as far afield as Chad. 'Faced with this gauntlet, some drivers unload their passengers [in the desert] and try to outrun the military.'<sup>140</sup> Others report seeing many more migrant bodies in the desert since the crackdown. Furthermore, what may result in deadly irony for EUCAP Sahel Niger is that depriving the 'passeurs' (people who transport migrants) in Agadez of what was a legitimate livelihood may result in easy pickings for terrorist recruiters who 'profit from unemployment'.<sup>141</sup>

### Libya's smugglers co-opted

The case of Libya in relation to fighting smugglers is perhaps a uniquely novel and cynical approach. Libya's smugglers have been and continue to fight smuggling on behalf and at the behest of the European Union as well

as for themselves in a dramatic new iteration of migrant-related business models.

### Whose side are they on?

In what some have called 'setting a thief to catch a thief',<sup>142</sup> since 2016 the EU's Operation Sophia and the Italian Navy have encouraged and supported the work of the Libyan Coast Guard; this became more explicit in early 2017. Whether the rumours of covert action (and payments to militias) by the Italians are true or not,<sup>143</sup> the co-opting of the smuggling militias in Libya started to take place openly. Libya's militias dominate the Coast Guard, as well as detention centres and much of the country's fractured security apparatus.<sup>144</sup> The Sabrathan militias, who were widely known to have run a 'major migrant smuggling operation', suddenly halted their activities and instead turned to policing smuggling, sanctioned by institutions that fall under the internationally recognised Government of National Accord (GNA). Here, the ever-pragmatic smugglers became anti-smugglers but, in the process, perpetuated the misery of refugees and migrants who are 're-cycled' and who often try to escape detention, abuse and hopelessness by attempting the sea route with other smugglers. The dramatic drop in migrant departures from the Libyan coast has been directly attributed to restrictions imposed by those militias who began to cooperate with Italy and the EU.<sup>145</sup> According to a recent report on the phenomenon, there is little to distinguish militias involved in smuggling from those that have taken on law enforcement or Coast Guard roles: 'In each case, their objective was to maximise the resources they could secure in a situation of perpetual uncertainty.'<sup>146</sup> Further evidence of this came in June 2018, when the UN Security Council imposed sanctions on several Libyans associated with the Coast Guard – or with earlier deals made with Italy to reduce migration – for alleged people trafficking (see below).<sup>147</sup>

### Smaller but riskier flows

However controversial (or, as some have argued, illegal<sup>148</sup>), this engagement of the EU and Italy – in particular with the Libyan Coast Guard – coupled with the reported deals made between Italy and some municipalities and tribes in Libya, had a dramatic impact

136 Thomson, M. (2019) African migration 'a trickle' thanks to trafficking ban across the Sahara. BBC On-line News January 11th 2019. <https://www.bbc.co.uk/news/world-africa-46802548>

137 Maclean, R. & Saley, O. op. cit.

138 Howden, D. op. cit.

139 World Bank (2017) Republic of Niger - Priorities for Ending Poverty and Boosting Shared Prosperity - Systematic Country Diagnostic. <http://documents.worldbank.org/curated/en/998751512408491271/pdf/NIGER-SCD-12012017.pdf>

140 Howden, D. op. cit.

141 Maclean, R. & Saley, O. op. cit.

142 Reitano, T. & Micallef, M. op. cit.

143 Ibid: Italy's multidimensional strategy engaged both Libya's Government of National Accord (GNA) and several municipalities and tribes in smuggling hubs across the country around the broad theme of 'development aid for migration control'

144 Ibid.

145 Villa, M. (2018) op. cit.

146 Reitano, T. & Micallef, M. op. cit.

147 UN News (2018) As Security Council imposes sanctions on six human traffickers in Libya, UN chief calls for more accountability. <https://news.un.org/en/story/2018/06/1011751>

148 Srour, M. (2018) International Law Experts Warn Europe's 'Pull Back' of Migrants is Illegal. Inter Press Service. <http://www.ipsnews.net/2018/09/international-law-experts-warn-europes-pull-back-migrants-illegal-part-2/>



on migration flows: there was a sudden decline in irregular maritime arrivals in Europe in the second half of 2017, a decline that continued into 2018. Still, rather than ending the harmful criminality associated with migrant smuggling, the engagement merely led to its adaptation to new circumstances and to greater risks to migrants as those involved could turn 'increasingly to alternative illicit activity such as kidnapping, forced labour and prostitution, trafficking and slavery.'<sup>149</sup>

For those who do still try to cross the Mediterranean, the journey has become much more dangerous: 'what we have seen is that the business model of smugglers and traffickers has changed in the last years, people are no longer put in seaworthy boats, so the journey is becoming more and more treacherous and the accidents are happening closer and closer to foreign shores.'<sup>150</sup>

## 4.7: The UN Security Council

In a noteworthy first example of its kind, in early June 2018 the United Nations Security Council imposed sanctions on six people accused of 'leading smuggling and trafficking networks' in Libya.<sup>151</sup> The six men – four Libyans and two Eritreans – reportedly headed up criminal networks and militias exploiting mainly sub-Saharan Africans seeking to cross the Mediterranean from Libya's coast.

The sanctions, which went into immediate effect on 7 June, froze the suspects bank accounts and prohibited them from international travel. Following a month-long investigation, and despite initial blocking by Russia, the motion for sanctions was tabled by The Netherlands with support from France, Germany, the United States and the United Kingdom.

### Ringleaders

According to reports, the six individuals include Mus'ab Abu-Qarin, who is accused of organizing the well-publicized April 2015 crossing that resulted in 800 fatalities, and Abd al Rahman al-Milad, who heads the regional unit of the Coast Guard in Zawiya and is believed to have collaborated with smugglers.<sup>152</sup>

The Security Council's move came 13 months after the prosecutor of the International Criminal Court told it that her office was considering launching an investigation into alleged migrant-related crimes in Libya, including human trafficking.

It also came in the wake of a report by the UN-appointed Panel of Experts on Libya issued in June 2017 that recommended extending international sanctions to those 'committing serious violations of human rights and international humanitarian law', with the treatment of migrants by human smugglers and traffickers in Libya falling under this definition.<sup>153</sup>

'This abuse has reached an unprecedented scale and level of severity, and these illicit activities have resulted in thousands of fatalities on land and sea,' one of the UN documents related to the sanctions says. 'This cynical business model has enabled armed groups to accumulate vast wealth,' it adds.<sup>154</sup> Prosecutors from the Netherlands, which instigated the sanctions, said the men were ostentatious with their wealth and acted with impunity.

### UK talks tough

Also in June 2018 the UK said it was ready to push for additional sanctions against other migrant smugglers. In a statement, then foreign secretary Boris Johnson said the UK would 'work with partners' to 'introduce additional sanctions against other individuals who threaten the peace, stability or security in Libya, or who undermine its peaceful political transition.' The co-sponsoring countries highlighted CNN's reporting on Libya's slave trade, giving it credit for driving attention '... to this terrible slave trade that has been going on in Libya for far too long,' Stef Blok, the Dutch Foreign Minister, said, emphasizing that 'will mean that this crime won't be left unpunished.'<sup>155</sup>

While these sanctions and the new engagement of the UNSC sanctions committee on issues of migrant smuggling and/or trafficking show international disgust for severe right violations against refugees and migrants in, or departing, Libya, it has to be seen in a context of general toleration of new EU plans to enable the Libyan Coast Guard to return intercepted maritime refugees and migrants. As such it is hard to interpret the real intent of this development. Is this an act in solidarity with refugees and migrants or a reflection of states' efforts to misdirect attention away from policies that create the need for smugglers in the first place? Or, less contentiously perhaps, is it an illustration of the political and ethical complexity of mixed migration at a time of political sensitivity around irregular movement? Or was it more, as Blok suggested, largely a reaction to CNN's high-profile coverage of abuses that had already been

149 Reitano, T. & Micallef, M. op. cit.

150 European Commission spokeswoman, quoted in: Nielsen, N. (2018) *Libyan militia cash in on EU's anti-smuggling strategy*. <https://euobserver.com/migration/143003>

151 UN News (2018) *As Security Council imposes sanctions on six human traffickers in Libya, UN chief calls for more accountability*. <https://news.un.org/en/story/2018/06/1011751>

152 Besheer, M. (2018) *UN Sanctions Six Human Traffickers in Libya*. VOA News. <https://www.voanews.com/a/un-sanctions-six-human-traffickers-libya/4429323.html>

153 For the full text of the report, see: <http://undocs.org/S/2017/466>

154 Quoted in: Elbagir, N. & Said-Moohouse, L. (2018) *Unprecedented UN sanctions slapped on 'millionaire migrant traffickers'*. CNN <https://edition.cnn.com/2018/06/07/africa/un-sanctions-migrant-traffickers-intl/index.html>

155 Ibid.

known to the UN for some months before the news channel's broadcast?<sup>156</sup>

## 4.8 The Bali Process

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime<sup>157</sup> is an international grouping established in 2002 as a voluntary forum for discussing policy, sharing information and cooperating on issues related to criminal aspects of irregular migration. Its stated aim is to promote rule of law approaches to curb human trafficking and migrant smuggling while striving to protect the victims of these crimes.

Membership of the Bali Process includes 45 mostly Asian countries – it is co-chaired by Australia (in the driving seat and chief funder) and Indonesia – as well as IOM, UNHCR, UNODC and the International Labour Organization. Its main regions of focus are South East Asia and Oceania. Many of the key countries engaged in the Process and affected by smuggler-facilitated mixed migration – such as Malaysia, Indonesia, Thailand, Bangladesh, Myanmar and Singapore – are not signatories of the 1951 Refugee Convention, leaving issues related to forced migration to be 'managed almost exclusively on a self-interested national basis'.<sup>158</sup> However, many have signed or acceded to the UN Convention against Transnational Organised Crime (with its specific anti-smuggling protocol).

Declarations emerging from ministerial conferences in 2016<sup>159</sup> and 2018<sup>160</sup> reiterate the need for a 'comprehensive regional approach' to the challenges of irregular migration, 'encourage members to identify and provide safety and protection to migrants, victims of human trafficking, smuggled persons' and highlight the need to address root causes of irregular movement and forced displacement.

### A limited role.

Ten years after its inception, a detailed anatomy of the Bali Process found, with 'the numbers of smuggled migrants and migrant smugglers unabated' that its policy focus had 'been dominated by border security imperatives' that it had 'achieved few concrete outcomes' and had 'fallen captive to Australian political interests', in particular, regarding the issue of detaining irregular migrants offshore<sup>161</sup> (see below).

*“It is merely naïve to believe that a consultative regional forum like the Bali Process which focuses almost exclusively on law enforcement and border control measures in the region can have any real impact on the levels of irregular migration, especially so long as this and other international forums fail to acknowledge, let alone address, the complex 'push' and 'pull' factors that drive international migration.<sup>162</sup>”*

A verdict on the Process issued by a group of regional academics four years later came to a similar conclusion, finding that 'its vast size and diverse membership meant it has stopped short of direct action in relation to major incidents of displacement. Its role was very limited in the 2015 Andaman Sea crisis'<sup>163</sup> when more than 25,000 people fled Myanmar and Bangladesh by boat, 8,000 of whom were stranded at sea.

It is beyond the scope of this paper to explore individual nations' policies in any depth (except Australia's – see below) but countries in the Asia Pacific, and many joined to the Bali Process, generally have a harsh approach to irregular migration, whether facilitated by smugglers or not. Apart from state efforts to intercept and arrest human traffickers and human trafficking rings and clear intentions to combat the activities of human smugglers, as elsewhere, the greater concern appears to be to stop irregular arrivals of undocumented foreigners. Again, if there is any 'war' against smugglers and traffickers it is interwoven with a wider intolerance and criminalisation of irregular movement by refugees and/or migrants.

156 The UN's migration agency highlighted migrant 'slave markets' in Libya in April 2017. See <https://www.iom.int/news/iom-learns-slave-market-conditions-endangering-migrants-north-africa>. CNN's report was broadcast in November 2017.

157 For full details, see: <https://www.baliprocess.net/>

158 McLeod, T. et al. (2016) *The Bali Process can do a lot more to respond to forced migration in our region*. The Conversation. <https://theconversation.com/the-bali-process-can-do-a-lot-more-to-respond-to-forced-migration-in-our-region-56213>

159 See text of 2016 declaration at: [https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20\(1\).pdf](https://www.baliprocess.net/UserFiles/baliprocess/File/Bali%20Declaration%20on%20People%20Smuggling%20Trafficking%20in%20Persons%20and%20Related%20Transnational%20Crime%202016%20(1).pdf)

160 See text of 2018 declaration at: [https://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%207%20Ministerial%20Declaration-Final\(2\).pdf](https://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%207%20Ministerial%20Declaration-Final(2).pdf)

161 Douglas, J. & Schloenhardt, A. (2012) *Combating Migrant Smuggling with Regional Diplomacy: An Examination of the Bali Process*. University of Queensland Migrant Smuggling Working Group. <https://law.uq.edu.au/files/6723/Douglas-Schloenhardt-Bali-Process.pdf>

162 Ibid.

163 McLeod, T. et al. op. cit. For a longer analysis, see also: Curley, M. & Vandyk, K. (2016) *The securitisation of migrant smuggling in Australia and its consequences for the Bali Process*. Australian Journal of International Affairs. <https://www.tandfonline.com/doi/abs/10.1080/10357718.2016.1181149?src=recsys&journalCode=cjij20>

## 4.9 Australian exceptionalism

Australia is an exceptional case. Until Italy's new populist government took up the controversial practice in 2018,<sup>164</sup> it was the only member of the OECD (and signatory of the 1951 Refugee Convention and the Palermo Protocols) in recent years to have implemented a strict and controversial 'stop the boats' policy to prevent human smugglers bringing refugees and migrants to their shores.

### 'Stop the boats'

After a sudden spike in irregular maritime migration from 2010 and specifically during 2012 and 2013,<sup>165</sup> the newly-elected government of Tony Abbot (who had campaigned on the issue) instituted a zero tolerance and no-exception 'stop the boats' policy under the Australian Defence Force-led Operation Sovereign Borders. This policy has been successful in curtailing irregular sea arrivals to Australia, disrupting the smugglers' business model with relation to Australia and at the same time ending associated migrant deaths in Australian waters and on the high seas *en route* to Australia.

But in doing so Australia has attracted considerable international and domestic criticism<sup>166</sup> (including legal challenges), mainly due to elements of the 1951 Refugee Convention that the policy contravenes, as well as the harsh detention conditions many arrested migrants and refugees face after being intercepted at sea; some have been towed out of Australian waters, others have been deported. Australia, as well as Nauru and Papua New Guinea (both countries paid to assist Australia's immigration policies, originally dubbed the Pacific Solution<sup>167</sup>) are signatories to the Refugee Convention but have allowed themselves to participate in this anti-smuggling/anti-irregular migration initiative despite asylum seekers' and refugees' rights being infringed in the process. UNHCR has been one of

the leading critics of Australia's policies, in particular its offshore processing policies.<sup>168</sup>

### A generous host

On the other hand, relative to other countries, Australia receives very large numbers of refugees for resettlement and accepts many labour migrants, as well as migrants accepted for other reasons such as family reunification and sponsorship. The country insists only official channels are acceptable and regards its anti-migrant-smuggling maritime policy as a success. Australia argues that it was only managed to convince voters to accept increased numbers of Convention refugees in 2016 and 2017 as a result of demonstrating that the 'stop the boats' policy works.

Recognising that by attracting international criticism, Australia has paid a price for circumventing the 'Liberal Paradox' that Europe still struggles to resolve,<sup>169</sup> Abbot (who left office in 2015 after losing a Liberal Party leadership battle to Malcolm Turnbull) told a right wing European political party in September 2016 that 'effective border protection is not for the squeamish'.<sup>170</sup> This was some days before Turnbull, as prime minister, told the United Nations in New York that Australia had the 'best border policies in the world'. In January 2017, Turnbull reportedly told a newly-elected Donald Trump that Australia had adopted its hard-line policy 'not because [those coming] are bad people. It is because in order to stop people smugglers we had to deprive them of the product'.<sup>171</sup>

According to a poll conducted in September 2015, the Australian government's hard-line policy toward migrants generally had the support of a slim majority of its population.<sup>172</sup> A more recent poll, conducted in October 2018, indicated that the tide of public opinion about the indefinite offshore detention of migrants was beginning to turn.<sup>173</sup>

164 See, among several media reports: O'Grady, D. (2018) *Italy's Matteo Salvini 'stops the boats'*. Sydney Morning Herald. <https://www.smh.com.au/world/europe/italy-s-matteo-salvini-stops-the-boats-20180613-p4z14s.html>

165 Intézet, M. (2016) *The Australian Model*. The Migration Research Institute. <https://www.migraciokutato.hu/en/2016/11/29/the-australian-model/>

166 A recent UN critique of Australian detention policies described 'massive abuse' of migrants: Human Rights Council. (2018) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*. [http://www.ohchr.org/Documents/Issues/Torture/A\\_HRC\\_37\\_50\\_EN.pdf](http://www.ohchr.org/Documents/Issues/Torture/A_HRC_37_50_EN.pdf)

167 Strict maritime immigration policies and arrangements with Nauru and Papua New Guinea and others have been in place from 2001 but were changed under different governments.

168 UNHCR (2017) *UNHCR chief Filippo Grandi calls on Australia to end harmful practice of offshore processing*. <http://www.unhcr.org/news/press/2017/7/597217484/unhcr-chief-filippo-grandi-calls-australia-end-harmful-practice-offshore.html>

169 Human Rights Watch (2015) *Australia/Papua New Guinea: The Pacific Non-Solution*. [www.hrw.org/news/2015/07/15/australia/papua-new-guinea-pacific-non-solution](http://www.hrw.org/news/2015/07/15/australia/papua-new-guinea-pacific-non-solution); Amnesty International (2015) *Australia: Damning Evidence of Officials' Involvement in Transnational Crime Uncovered*. [www.amnesty.org/en/press-releases/2015/10/australia-damning-evidence-of-officials-involvement-in-transnational-crime-uncovered](http://www.amnesty.org/en/press-releases/2015/10/australia-damning-evidence-of-officials-involvement-in-transnational-crime-uncovered).)

170 Abbott, T. (2016) *Address to the Alliance of European Conservatives and Reformists*, Lobkowicz Palace, Prague, Czech Republic. <http://tonyabbott.com.au/2016/09/address-alliance-european-conservatives-reformists-lobkowicz-palace-prague-czech-republic/>

171 Loewenstein, A. (2018) *Australia's Brutal Refugee Policy Is Inspiring the Far Right in the EU and Beyond*. The Nation. <https://www.thenation.com/article/australias-brutal-refugee-policy-inspiring-far-right-eu-beyond>; Miller, N. (2018) *Australia's hard line on asylum seekers echoes around the world*. Sydney Morning Herald. <https://www.smh.com.au/world/europe/australia-s-hard-line-on-asylum-seekers-echoes-around-the-world-20180622-p4zn3g.html>

172 Taylor, L. (2015) *Poll shows Australians back rise in refugee intake, but criticise Abbott's handling of crisis*. The Guardian. [www.theguardian.com/australia-news/2015/sep/09/poll-shows-australians-back-rise-in-refugee-intake-but-criticise-abbotts-handling-of-crisis](http://www.theguardian.com/australia-news/2015/sep/09/poll-shows-australians-back-rise-in-refugee-intake-but-criticise-abbotts-handling-of-crisis).

173 Sky News (2018) *Strong support for Labor's offshore processing policy*. [https://www.skynews.com.au/details/\\_5779570301001](https://www.skynews.com.au/details/_5779570301001)

## Lessons for Europe?

Australia has been labelled as having 'one of the harshest border policies in the world', with questions raised as to what policy lessons Europe could learn from its experience.<sup>174</sup> For their part, Australian prime ministers since 2015 have claimed that stopping boats is the only way to end the deaths in the Mediterranean and with them the migrant smuggling business. Here again, we see efforts to end migrant smuggling closely caught up with policies on refugees, asylum and migration as well the electorate's putative intolerance for irregular arrivals and weak border controls. Equally, what may be a successful single country approach for Australia does little to curb the activities of smugglers or reduce migrant smuggling *per se*. Larger numbers of smuggled migrants arriving in Malaysia and increased numbers of Afghans entering Europe may be evidence of this 'balloon effect' in relation to smuggling.

In view of redoubled efforts to externalise European borders and new ideas around external refugee processing (see above), current policies in place within Europe, as well as cooperation with third countries, already bear a strong resemblance to the Australian offshore processing model.<sup>175</sup> Without explicitly stating it, the EU's ongoing reforms, which include elements that strengthen current externalisation trends, appear to chime with Australian claims in recent years that the EU should learn from its example.

## 4.10: The US approach

*“...the people of this country don't want criminals and people that have lots of problems and drugs pouring into our country.”*

US President Donald Trump, Dec 12, 2018<sup>176</sup>

U.S. Immigration and Customs Enforcement (ICE) is the lead law enforcement agency in the United States responsible for fighting migrant smuggling and human trafficking. ICE claims to have embarked on an 'ambitious strategy' to dismantle organized migrant smuggling networks but gives little details of these strategies or successes. Set up in 2014, its Human Smuggling

and Trafficking Center works towards 'breaking' the smuggling chain. Although the ICE website takes pains to explain the legal differences between migrant smuggling and human trafficking, that this key entity tackles both crimes, and repeatedly refers to 'human smuggling and trafficking' in its literature, suggests that the distinction is only skin deep. And, despite its claim to 'ensure aggressive investigation and prosecution of smuggling cases along the border', hundreds of thousands of smuggler-facilitated irregular migrants (overwhelmingly economic migrants and few asylum seekers) cross into the US, and hundreds of thousands are deported back to Mexico, annually, raising doubts about the effectiveness of ICE's fight to halt smuggling and interdict smugglers.<sup>177</sup>

### Irresistible opportunities

Nevertheless, the US has a strong record in publicly condemning and combatting human trafficking, and in the case of the US/Mexican border there is evidence of a nexus between people smuggling and human trafficking as well as the drug trafficking business, primarily through the territorial control exerted by drugs cartels along border areas. Seeing opportunities for additional profit from the massive number of crossings in recent decades, coupled with a sense of ownership of the territory concerned, has led criminal groups to appropriate aspects of the migrant smuggling business, either through demanding payments for passage from smugglers and individuals, or by getting involved in the business itself.<sup>178</sup> As such, the US/Mexican border offers a unique and complex case not found elsewhere.

In early 2015, ICE joined Europol's Focal Point Checkpoint, which targets migrant smuggling networks. Citing the need to 'stand together in fighting the increasing emerging threats from organised crime', Europol's director at the time said the agreement would 'allow for increased cooperation in the fight against people smuggling, and aid to provide a proactive law enforcement response to this tragic crime'.<sup>179</sup> He added that ICE might also participate in a separate Europol initiative 'focused on combating irregular migration in the Mediterranean [... and specifically on] organised criminal groups who are facilitating the journeys of migrants by ship across the Mediterranean Sea to the EU.' Again, whereas political discourse in Europe often frames the war against migrant

174 See, for example: Farrell, P. (2015) *Could Australia's 'stop the boats' policy solve Europe's migrant crisis?* The Guardian. <https://www.theguardian.com/world/2015/apr/22/could-australia-stop-the-boats-policy-solve-europe-migrant-crisis>; and: Wnukowski, D. (2016) *Australia's Asylum and Migration Policy: Lessons to Apply to the European Refugee Crisis*. Polish Institute for International Affairs. [https://www.pism.pl/files/?id\\_plik=21208](https://www.pism.pl/files/?id_plik=21208)

175 Davitti, D., Fries, M. & Walter-Franke, M. op. cit. See also Loewenstein op. cit.

176 Trump was speaking during an acrimonious exchange with two Democratic lawmakers in the Oval Office that was widely reported. See, for example: Rampton, R. & Cornwell, S. (2018) *In heated on-camera clash, Trump fights with top Democrats on border wall*. <https://af.reuters.com/article/worldNews/idAFKBN10A1CD>

177 A summary of some criminal prosecutions can be found on this UNODC database: [https://sherloc.unodc.org/cld/v3/som/cldb/search.html?lng=en#c=%7B%22filters%22:%5B%7B%22fieldName%22:%22en%23caseLaw@country\\_label\\_s%22,%22value%22:%22United%20States%20of%20America%22%7D%5D%7D](https://sherloc.unodc.org/cld/v3/som/cldb/search.html?lng=en#c=%7B%22filters%22:%5B%7B%22fieldName%22:%22en%23caseLaw@country_label_s%22,%22value%22:%22United%20States%20of%20America%22%7D%5D%7D)

178 Leutert, S. (2018) *Drug and Migrant Smuggling Across the US-Mexico Border: An Interview with Natalia Mendoza*. Lawfare. <https://www.lawfareblog.com/drug-and-migrant-smuggling-across-us-mexico-border-interview-natalia-mendoza>

179 Europol (2015) *Ice Signs Agreement to Join Europol's Efforts to Target People Smuggling*. <https://www.europol.europa.eu/newsroom/news/ice-signs-agreement-to-join-europol%E2%80%99s-efforts-to-target-people-smuggling>

smugglers as motivated by a desire to protect migrants, it seems clear that at least in this case the primary objective is to reduce migratory flows.

### Shift of focus

In recent years, public dialogue in the US has shifted from the repressive regimes or harsh contexts that cause asylum seekers and migrants to flee, to the criminals who assist their escape. Some argue that policies which blame smugglers 'divert attention away from the fact that smuggling is first of all a reaction to the militarisation of border controls, not the cause of irregular migration'.<sup>180</sup> They point to the irony that 'policies that want to fight, combat or blame smugglers are bound to fail because they are among the very causes of the phenomenon they claim to tackle'.<sup>181</sup>

In a singular case in June 2018, the US Treasury imposed financial restrictions on the six men in Libya on whom the UN Security Council imposed sanctions after a CNN investigation documented how they profited from the smuggling of migrants and exploitation of refugees, who were sold as slaves in some cases (See above).

### Little talk of legalising smuggling...

The shift from prohibition to legalisation seen in discussions around the war on drugs has not been found in the war on migrant smuggling, except amongst pro-open border NGOs and liberal circles. (...the regularisation of existing irregular migrants is discussed below).

Facing a sceptical and nervous electorate and rising populist nationalism, politicians and states are not seriously considering 'legalising' irregular and smuggler-facilitated entry into the US. On the contrary, President Trump's reaction in late 2018 to 'caravans' of asylum seekers and migrants making their way up through Central America to the US border has been to position thousands of soldiers along the expected crossing points. Apart from militarising the border to a degree never previously seen, the rhetoric used against those in the caravans and those supposedly organising these mass movements suggests (without evidence) that there are terrorists, traffickers, other criminals and left-wing political agitators involved.<sup>182</sup> The discussion of human smugglers was eclipsed as the politicisation and confrontation of irregular migration escalated.

### ...but some of regularising the irregulars

However, in some US states the regularisation of millions of irregular foreigners continues to be considered since former president Obama proposed it in 2013. Since Donald Trump's tenure started in January 2017 his administration has taken a hard line against irregular border crossings and seeks to end regularisation of existing migrants, including those who although born to migrant parents have lived all their lives in the US.<sup>183</sup> Despite many of Trump's ambitions and decrees being challenged or reversed in American courts, the tough anti-migrant and anti-asylum seeker narrative continues, but very little is heard about the coyotes and smugglers behind them. While the US continues to wage war on human trafficking, any attempts to combat migrant smuggling seems to be less clear and more reactive than proactive at present.

## 4.11: The Global Compact

After two years of international negotiations, and in the face of objections from the US, 164 countries agreed on the landmark Global Compact for Safe, Orderly and Regular Migration (GCM) in the Moroccan city of Marrakech on December 10, 2018 (formally adopted in New York a week later).<sup>184</sup> The non-binding, rights-based agreement is a key output of the New York Declaration for Refugees and Migrants adopted by the UN General Assembly in September 2016 as a step towards formulating global policies and cooperation on managing migration while fully respecting the sovereign rights over national policy of participating states. For the IOM, this was 'an historic achievement by the international community... [that] should lead to a more balanced discourse, better policies and more widespread cooperation on migration'.<sup>185</sup>

This massive support and global consensus for the GCM represented a great success for those drafting and campaigning for the compact. It was only somewhat undermined by the withdrawal from the GCM of not only the United States but also the Czech Republic, Hungary, Poland, Latvia and Israel. Others, such as Australia, Italy and others abstained from voting. Their purported reasons for doing so – most notably fears over ceding control of migration issues, and of the imposition of

180 Van Liempt, I. op. cit.

181 Ibid.

182 Wolfson, S. (2018) *Are Donald Trump's claims about the caravan of 7,000 migrants accurate?* The Guardian. <https://www.theguardian.com/us-news/2018/oct/22/fact-check-trumps-claims-migrant-caravan>

183 Recent polemic around the so-called DREAMers has dominated discourse and headlines, resulting in large scale-demonstrations. See for example: Al Jazeera (2018) *Demonstrations take place across the US in support of 'DREAMers'*. <https://www.aljazeera.com/news/2018/03/demonstrations-place-support-dreamers-180305173851985.html>

184 Global Compact for Migration (2018) *Global Compact for Safe, Orderly and Regular Migration – Final Draft*. <https://www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/migration.pdf>

185 IOM (2018) *IOM Lauds Adoption of Global Compact for Migration*. Press release. <https://www.iom.int/news/iom-lauds-adoption-global-compact-migration-0>

legalised immigration – have been credibly dismissed as ill-founded on several grounds.<sup>186</sup>

“There’s a lot of careful language in the compact that’s not too maximalist or too minimalist. It’s a delicate balance between the protection of the rights of migrants and the very strong voice of governments to retain control over their sovereign territory.”<sup>187</sup>

### Smuggling as a spoiler

The first line of a vast review of data and research on migrant smuggling published by IOM in 2016 declared that ‘the smuggling of migrants across international borders on routes traversing land, air and sea continues to undermine migration governance and impedes safe and orderly migration.’<sup>188</sup>

Under the GCM’s Objective 9 (of 23) – ‘Strengthen the transnational response to smuggling of migrants’ – signatory states have agreed to take a range of actions to prevent smuggling, ensure smuggled migrants are not criminalized and to end the impunity enjoyed by smuggling networks. According to the Global Initiative against Transnational Organised Crime (GI), which provided advice during the drafting of the GCM, ‘the methods suggested to achieve these goals range from the traditional – compelling states to ratify UNTOC – to the more innovative – i.e. institutionalizing transnational mechanisms for intelligence sharing.’<sup>189</sup>

GI raised concerns about the compact’s goal of ending the impunity of smuggling networks. It considers the text’s emphasis lacks ‘nuance’ by echoing the traditional perspective that all smuggling is inherently exploitative, illicit behaviour. GI correctly notes that migrant smuggling ‘exists on a spectrum – from very low-level, limited or non-profit activities to highly orchestrated, violent and lucrative criminal groups extorting and exploiting migrants.’<sup>190</sup>

### Need for nuance

The GCM therefore currently runs the risk of perpetuating the pursuit of **any** perpetrator engaged in migrant smuggling, presenting a blanket zero tolerance approach that is not dissimilar to prohibitionist anti-drug policies in

that it fails to distinguish between explicitly anti-social and dangerous smugglers from others who may provide simple services enabling mobility that do not endanger live or rights of migrant in their charge.

Instead, GI advises that law-enforcement bodies target three categories of smugglers, name those groups which:

- have the infrastructure and capacity to move large numbers of people en masse;
- use the profits from smuggling in harmful ways (e.g. to perpetrate violence, conflict or terrorism); and
- enact the greatest levels of abuse or exploitation against the people they move.

### Risk of counterproductivity

The GI position, and that of others who oppose policies that target migrant smugglers indiscriminately, is that people resort to smugglers only when legal and regular avenues to transit countries and access destination countries is unavailable. They conclude that, ‘until this is accepted, we risk crafting more creative yet ineffective policies in the GCM designed to overcome these deficiencies.’<sup>191</sup>

In this respect the efforts to combat migrant smuggling as envisaged in the GCM are analogous to unequivocal and inflexible approaches to drug prohibition and interdiction, where efforts to reduce demand are less substantial than efforts to destroy supply, access to and use of drugs. However, there is an inherent and unmentioned problematic in this critique in that signatory (not to mention their electorates) are presently unwilling to accept the mobility of large numbers of migrants by any means – regularly or irregularly.

### Legalise them?

Still, in signing the GCM states agreed to ‘Enhance availability and flexibility of pathways for regular migration’ (Objective 5). Again, there is no binding commitment here to justify the withdrawal of the non-signatories, but the preamble of this objective, even with its caveats, espouses an openness that – because of the dominance of securitization rhetoric – is rarely, if ever, heard in the political discourse or policies of destination states:<sup>192</sup>

186 Ardittis, S. (2018) *What’s to Fear in the U.N. Global Compact for Migration?* Refugees Deeply. <https://www.newsdeeply.com/refugees/community/2018/12/05/whats-to-fear-in-the-u-n-global-compact-for-migration>; see also: Karas, T. (2018) *Briefing: The new global migration pact*. IRIN News. <https://www.irinnews.org/analysis/2018/12/12/briefing-new-global-migration-pact>

187 Pia Oberoi, UNODC advisor on migration and human rights, quoted in: Karas, T. op. cit.

188 McAuliffe, M. & Laczko, F. (eds) op. cit.

189 McCormack, S. & Reitano, T. (2018) *Stopping the smugglers: Objective 9 of the Global Compact for Safe, Orderly and Regular Migration. The Global Initiative Against Transnational Organized Crime*. <http://globalinitiative.net/stopping-the-smugglers-objective-9-of-the-global-compact-for-safe-orderly-and-regular-migration/>

190 Ibid. For more on the range of activities that are encompassed by the term ‘migrant smuggling’ see also: McAuliffe, M. & Laczko, F. (eds) op. cit.

191 Ibid.

192 While rarely aired by mainstream politicians, especially in this age of growing populism, there are numerous moral, practical and economic arguments for ending restrictions on migration. Many are explored here: <https://openborders.info/blog/welcome-to-open-borders/>; see also: The Economist (2018) *Open Borders – The Case for Immigration*. <https://www.economist.com/open-future/2018/04/16/the-case-for-immigration>

We commit to adapt options and pathways for regular migration in a manner that facilitates labour mobility and decent work reflecting demographic and labour market realities, optimizes education opportunities, upholds the right to family life, and responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration.<sup>193</sup>

The GCM also calls on its signatories to make it easier for migrants in destination states to transition from an irregular to a regular status (Objective 7; Actions h and i). While large-scale regularisation schemes are rarely publicised by politicians for fear of alienating voters, some recent examples stand out.

In October, 2018, for example, the Irish government, prompted by a supreme court ruling, initiated a scheme to allow more than 5,000 people whose legal status under a student visa programme had lapsed to regularize their presence in the country.<sup>194</sup> Over the years, millions of migrants across the EU (for instance in Italy and Belgium in 2009, and in Poland in 2012)<sup>195</sup> as well as in the US, who fulfilled a range of criteria have similarly transitioned from illegality to legality.

Of course, effecting such transitions for migrants already present in a country is quite a different prospect to lifting most or all restrictions on the arrival those still outside who want to enter. And while the recent decriminalisation and legalization of certain drugs has shown the fears preceding such dramatic policy shifts to be mostly misplaced, the impact of unfettered immigration, whether positive or negative, would arguably be more far-reaching and profound, both for recipient states and migrants themselves.

However, in this scenario, journeys and conditions would become far less hazardous and the price would fall significantly. Smugglers would be rapidly replaced by legitimate service providers operating in a normal competitive market rather than the clandestine and often monopolistic enterprises that currently pertain. Drugs, when legalised, will become much cheaper when the criminal aspect is removed. Government subsequently can keep prices high (to make sure not everyone can afford it) by adding taxes. They can also better control the quality, etc.

Legalised migration also becomes cheaper. Instead of paying 10,000 USD from Somalia to Europe, a Somali can now buy a ticket for 1,500 USD to Europe and legally enter. (unless governments would tax people from certain countries through variable visa costs and associated

conditions. Of course, unfettered immigration is not the only option by any means and the main challenge for most countries and authorities is to decide what the appropriate balance should be between access and restriction and is the core of any immigration policy. Part of the policy could and often does, (even if not widely publicised) include regularisation of certain groups of irregular migrants already in-country.

The notion that migrants will continue to arrive irregularly with the help of smugglers for as long as regular channels remain inaccessible is not an attractive one for governments – just as unpalatable as the notion that recreational drug users will continue to break laws until prohibition is eased. Efforts to counter migrant smuggling, like the new approaches to halting drug trafficking, will need to adopt a more varied, context-specific and complex strategy. At present the GCM does not offer that in concrete terms, and as a non-binding global instrument it runs the risk of being ignored as the more immediate political demands of controlling migration dominate.

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193 Global Compact for Migration op. cit.

194 Keena, C. (2018) Thousands of 'undocumented' may be regularised under new scheme. Irish Times. <https://www.irishtimes.com/news/crime-and-law/thousands-of-undocumented-may-be-regularised-under-new-scheme-1.3663268>

195 Mc Govern, C. (2014) EU Regularization Programmes: An Effective Tool to Manage 'Irregular Migration'? Our World/United Nations University. <https://ourworld.unu.edu/en/eu-regularization-programmes-an-effective-tool-to-manage-irregular-migration>



**Photo credit:** Carlos Spottorno / Panos.  
Tovarnik, Croatia (Date unspecified)

Two crying children standing beside a group of riot police in the middle of turmoil at the train station as thousands of refugees and migrants wait to get on a train or a bus. This image and the one below it show how the efforts to combat smugglers are entwined with efforts to control and prevent irregular movement of mixed migration. Unlike proactive efforts to stop drug trafficking, those related to stopping smugglers are primarily reactive and most commonly result in security forces interfacing with those on the move and not smugglers.



**Photo credit:** David Rose / Panos.  
Calais, France (2015)

Riot police in the so-called 'Jungle' migrant's camp which was subsequently cleared of people and destroyed by the French authorities. Smugglers not only assisted most of those in mixed migration to come to Europe using irregular pathways but were also, reportedly, residing in detention centres and spontaneous gatherings of refugees and migrants across Europe such as the Jungle. Again, this illustrates the difficulties facing authorities seeking to identify and disrupt the smuggling business.



# Media characterisation: cartoons

As with the war on drugs, the effort to combat migrant smugglers and the issue of migration and asylum has become highly politicised and polemical. Satirical cartoonists have captured some of the mood and dilemmas of the debates in numerous press illustrations - a small selection of which are presented here.

[Credit: Appreciation to the artists and for use of these non-commercial reproductions for this study]



Ben Sargent



caglecartoons.com



Clay Butler



Paresh Nath



Tim Kelly



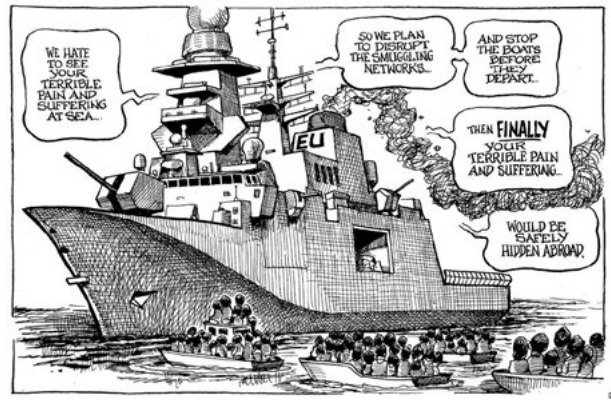
Dave Granlund



M Wuerker



Paresh Nath



Kal



Arend Van Dam



Kevin Siers, Charlotte Observer



Cam



Paresh Nath



Paresh Nath



Chappatte

# Conclusion

One of the key differences between the business of trafficking illegal drugs and that of smuggling migrants is that the commodity is inanimate in the former and human in the latter.

Some might take issue with the fact that the two activities are discussed together on the ground that such a comparison risks emphasizing the criminal aspect of migrant smuggling and thereby fuels a securitization narrative that contributes to a restrictive environment for those on the move: migrants and refugees who often feel they have no choice but to use smugglers and who are rarely, if ever, given a voice in the formulation of policies ostensibly designed to protect them.

Indeed, Objective 9 of the Global Compact on Migration (GCM) stresses that while Member States should commit to 'intensify joint efforts to prevent and counter smuggling of migrants by strengthening capacities and international cooperation to prevent, investigate, prosecute and penalize the smuggling of migrants in order to end the impunity of smuggling networks', they also 'commit to ensure that migrants shall not become liable to criminal prosecution for the fact of having been the object of smuggling', and that they have access to protection and assistance. As with victims of trafficking the GCM emphasises concern for victims of 'smuggling under aggravated circumstances'.<sup>1</sup>

Of course, people who wish to use prohibited substance could equally argue they are forced to engage with drug traffickers to obtain what they want and that in their ideal world they could obtain drugs legally. However, the emphasis on the criminal aspects of human smugglers by governments globally is already apparent and the frequent and cynical politicization of this aspect is well noted as governments use it to take on another battle – namely curbing irregular migration. "At the core of it, it's all about fighting illegal migration," German Chancellor Angela Merkel told a news conference in August 2017 following another EU & Africa meeting on how to 'tackle illegal human trafficking [sic] and support nations struggling to contain the flow of people across the desert and Mediterranean Sea'.<sup>2</sup>

The core aim of this paper is to see if the experience of fighting drug trafficking for so many decades offers insights for policy makers, governments and others before the fight to curtail migrant smuggling is stepped up. Its aim is to contribute to the intellectual and policy debate by offering an analysis of issues often discussed in the same

breath but to date has not been subject to a dedicated analytical cross comparison.

As illustrated in this report we find that on some issues there are pertinent comparisons to be made between the two 'wars' and on others there are not.

The war on migrant smuggling inherently pits authorities and states against people on the move –many of which are desperate to flee conflict or persecution and who are therefore protected under international law. The very act of combatting migrant smuggling in situations where the smuggler him or herself is invisible or absent (overcrowded and abandoned boats on the Mediterranean or in Pacific Ocean) will prevent economic migrants, asylum seekers and registered refugees from reaching their destination and often cause them to be stranded in dangerous and precarious situations where their rights are not protected. The irony is self-evident when governments indignantly justify going to war against human smugglers because of violations and deaths at the hands of smugglers. The collateral damage of the war on human smugglers therefore is the migrants themselves and their communities, even though to be a smuggled migrant is in itself not a crime.

The war on drugs pits authorities against criminals –often heavily armed and violent –with many opportunities for confrontation while DTOs produce, transport and sell illicit goods. It may seem that this war has few 'non-combatant' casualties, but, in fact, as this paper shows the war on drugs has a host of negative results. Results that impact millions of citizens who have no connection to the drugs business at all as well as those rural producers and community of cultivators who may or may not be operating under coercion of drugs cartels.

We find too, that while the war on drugs is extensive, entrenched and generally follows a monolithic global consensus (even if the operations are multi-pronged), the 'war' on migrant smuggling is partial, weakly implemented and globally lacks any coherences or consensus –often chaotic and contradictory. The unifying but often unstated consensus of those engaged or gearing up to engage in wars against smugglers is their desire to restrict mixed migration flows.

As such the war on smuggling could be described as a *displacement activity* or a *trompe l'oeil* which the war on drugs has never been, although even here some echoes can be seen where the demonization and targeting of

1 Global Compact for Migration (2018) *Global Compact for Safe, Orderly and Regular Migration – Final Draft*. <https://www.un.org/pga/72/wp-content/uploads/sites/51/2018/07/migration.pdf>

2 Reuters (2017) *Europeans, Africans agree renewed push to tackle migrant crisis*. <http://news.trust.org/item/20170828124010-v1rpm/>

drug user communities may also be an effort to discredit perceived anti-establishment groups.

Additionally, because the war against migrant smuggling is just beginning, we can expect it to be elaborated with new strategies and tactics in the coming years and irregular migration is likely to increase as the 'unfinished business of globalization' and in response to pressing global inequalities<sup>3</sup>. This is already occurring rapidly in Europe in particular and the story is far from over but it may also mean that comparing the war against migrant smuggling with drugs is at present too asymmetrical for lessons to be drawn.

One conclusion could be that the comparison between the impacts of the two wars are not always meaningful as they are out of step. They may become more out of step if current trends to end irregular migration become more explicit and comprehensive with a focus more on methods and systems to prevent access than an explicit 'war' on human smugglers.

However, even here there are clear parallels in so far that the global war on drug trafficking is also to prevent access to illicit substances in absolute terms. It is not only about punishing those enabling access to drugs. Preventing drug traffickers from profiteering, like the efforts to stop human smugglers from profiteering, is high on drug enforcement and rule of law agenda, but arguably secondary to the desire to prevent access. Just as certain nations want to end the flow of illicit drugs into their countries, countries want to prevent the flow of people entering territories in an unregulated and irregular manner. While legalisation of drugs or regularisation of irregular migration ends the issue of *illegality* (and promoted by some protagonists), it does not address the fact that both illicit drugs themselves and uninvited irregular flows are still unwanted by governments, and arguably, most electorates—irrespective of actual labour demands in destination countries.

Those who have observed that the war on drugs continues to fail, as it has for decades, insist that the current debate on drug policy should not be based on simplistic solutions derived from preconceived ideological positions. Instead, policy must be based on research and analysis that takes into account all the available evidence about the effectiveness, efficiency and costs of alternative drug policies.<sup>4</sup> We can expect calls for this kind of evidence-based policy analysis around migrant smuggling and migration policy in the near future. Indeed, reports and interviews with leading academics and policy experts already exist and are cited in this report and elsewhere.<sup>5</sup> Some could conclude that sufficient evidence exists to show that the war on migrant smuggling already runs the risk of following the anti-drugs efforts as resulting

in overall failure. Why wait years for further evidence to confirm such a conclusion and instead abandon the war or seek alternatives at an early stage? Others could point to the recent reduction in irregular arrivals in Europe, Australia and elsewhere to suggest that policies to reduce irregular mobility and therefore smuggler activity can be effective.

Nevertheless, while legal, judiciary and executive force against drug trafficking continues to fail to end the trade, the same combined forces have not yet been deployed in a coherent and inter-regional manner against migrant smuggling. Where counter narcotic strategies have failed, those fighting migrant smuggling could theoretically succeed but there are to date no examples of success (in terms of disrupting/suppressing the migrant smuggling economy), except some few individual cases which also come with what many find is a heavy or unacceptable ethical price tag and further rights abuses.

Drug policy, like any other public policy, must be and is being increasingly 'judged by its results, and not by its intentions, and although in theory prohibition sounds like a reasonable choice, the available evidence is clear in pointing out the very high costs and ineffectiveness of many of the policies that have been implemented so far under the so-called war on drugs'.<sup>6</sup> Again, the same will be required of migration policy and anti-migrant smuggling strategies as its effectiveness is assessed.

Nevertheless, millions of people with determination and sufficient resources (human and financial) assisted by a few thousand facilitators (smugglers) combine to present a formidable 'enemy' to those who would wage war on migrant smuggling. Arguably, those engaged in drug trafficking are far fewer in number than smugglers combined with those smuggled, but have, to date, defied the most forceful efforts globally and appear to continue their robust and flourishing trade.

When the costs are considered, the vast resources counted, the efforts evaluated and the impact judged, then the last few decades have shown that the war on drugs – in the way that it has been fought – has failed, and most commentators agree success is unachievable. Not only has it failed in curtailing illicit drug production, trafficking and use on a vast scale but the associated negative effects of the failure and the war itself are considerable.

If nothing else, the story of the war on drugs offers if not direct sobering and salutary lessons to the current architects and designers of current and future wars against human smugglers and their human cargo, then cautionary warnings, that we would do well to understand and act upon.

3 Horwood, C & Reitano, T. op. cit.

4 For a recent iteration of these views see: IDPC (2018) op. cit.

5 Horwood, C., Forin, R. & Frouws, B. (Eds.) op. cit.

6 Felbab-Brown, V. op. cit.

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**Back cover photo credit:** Espen Rasmussen / Panos. Lesbos (Lesvos), Greece (2015)

A group refugees and migrants make their way from a beach on the northern coast of Lesbos after crossing the Aegean Sea from Turkey. The summer of 2015 saw a huge increase in the number of migrants and refugees arriving in Greece. Its Aegean islands have become a major destination for people trying to get into the European Union but rarely if ever travel with the smugglers whom they pay to organise their journey - exemplifying the dilemma of interdiction efforts to disrupt and curtail the smugglers' business model.



The Mixed Migration Centre (MMC) is a global network consisting of six regional hubs (Asia, East Africa, Europe, Middle East, North Africa & West Africa) and a central unit in Geneva. The MMC is a leading source for independent and high-quality data, research, analysis and expertise on mixed migration. The MMC aims to increase understanding of mixed migration, to positively impact global and regional migration policies, to inform evidence-based protection responses for people on the move and to stimulate forward thinking in public and policy debates on mixed migration. The MMC's overarching focus is on human rights and protection for all people on the move.

The MMC is part of, and governed by the Danish Refugee Council (DRC). While its institutional link to DRC ensures MMC's work is grounded in operational reality, it acts as an independent source of data, research, analysis and policy development on mixed migration for policy makers, practitioners, journalists, and the broader humanitarian sector. The position of the MMC does not necessarily reflect the position of DRC.

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