

# Just Passing Through? International Legal Obligations and Policies of Transit Countries in Combating Trafficking in Persons


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## Abstract

This article identifies several key characteristics of transit countries, including: (1) geographic proximity to attractive destination countries; (2) insufficient legislation and weak enforcement to deal with trafficking in persons and migrant smuggling; (3) liberal immigration policies; and (4) an operational criminal infrastructure to facilitate trafficked persons' entry into and exit from a country. The challenges faced by transit countries – compared with origin and destination countries – are discussed, and then a focused analysis is provided of the measures that transit countries should pursue to prevent trafficking, prosecute traffickers and protect victims. The article concludes that global efforts to improve the response of destination and origin countries for human trafficking must be expanded to hold transit countries accountable in addressing this problem.

## Keywords

Illegal Migration, Migrant Smuggling, Smuggling–Trafficking Distinction, Trafficking in Persons, Transit Countries.

International trafficking in persons is a serious transnational crime and human rights violation that is often facilitated by the movement of victims through one or more transit countries to a destination country, where they will be subject to exploitation. However, there has been a general lack of attention paid to the obligations and good practices of transit countries in addressing human trafficking.

Of the 154 jurisdictions ranked in the United States (US) Department of State's *Trafficking in Persons Report 2008*, two-thirds (103 jurisdictions) were identified as acting as transit points for trafficking in persons (US Department of State 2008). The United Nations Office on Drugs and Crime (UNODC 2006: 60) also identified 98 jurisdictions as transit countries

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for human trafficking. Although the US Department of State routinely ranks jurisdictions on their overall efforts to combat trafficking in persons, there has been little reference to specific standards for transit countries. International bodies, such as the International Organization for Migration (IOM), have similarly offered only limited guidance for transit countries on performance indicators for counter-trafficking projects (IOM 2008).

## **Overview**

This article examines the role of transit countries in international trafficking in persons and seeks to identify legal and policy approaches to improve the abilities of these transit countries to confront this problem. I first identify factors that may contribute towards a jurisdiction becoming a transit country. After exploring the challenge of differentiating at the transit stage between international human trafficking and migrant smuggling, I then analyse international legal instruments related to trafficking in persons and migrant smuggling to provide a framework of relevant obligations for transit countries. Although these treaties establish a baseline for appropriate conduct by transit countries, complex policy issues arise in attempting to formulate a transit strategy to combat international trafficking in persons. Before concluding, I summarize policies that transit countries have adopted to combat human trafficking. Through this analysis, a clearer understanding of the responsibilities of transit countries emerges to evaluate their progress and encourage their efforts.

## **Characteristics of transit countries**

Transit migration has been defined by the IOM as ‘migratory movements to one or more countries with the intention to migrate to yet another country of final destination’ (Siron and Van Baeveghem 1999: 5). Transit migrants may enter a transit country: (a) on their own initiative (legally or illegally); (b) with the assistance of a smuggler who they have agreed will facilitate their movement and then terminate the relationship on arrival in the destination country; or (c) with the assistance of a trafficker, or his/her associates, who intend to exploit the individual in the destination country. In the case of international trafficking in persons, the individual being moved may, or may not, be aware of the final destination or that the ultimate purpose of the movement is their exploitation.

Traffickers resort to transit countries because they provide a relative advantage in routing victims to the destination country. As Trevor Pearce of the United Kingdom (UK) National Criminal Intelligence Department recognized, ‘organized criminals will try to push people over any border that is easiest for them to cross’ (Nikolić-Ristanović et al. 2004: 161). The destination country is viewed as a greater source of potential profit from the exploitation of victims, compared with the transit country. Although trends may be identified, routes used to move international victims of human trafficking are regularly changed to avoid detection (United States-Canada 2006).

During the past decade, several regional and local studies have been completed on human trafficking transit countries. Collectively, they provide a set of characteristics that help explain why traffickers may choose to move their victims through one or more transit countries in order to reach the destination country – rather than direct origin-to-destination country routing.

First, geography plays an important role in a country becoming a transit point. Transit countries are frequently proximate by way of land, sea and air to countries that are attractive destinations for traffickers to exploit victims. Large stretches of uncontrolled land or water boundaries with the destination country and other attractive geographical features may encourage traffickers to exploit a given transit country. For example, Derluyn and Broekaert (2005) attribute Belgium's use as a principal transit zone for trafficking into the UK to the important sea connection that Belgium provides for continental Europe to the UK. Likewise, İçduygu (2004: 90) found that Turkey became a transit zone for migrants destined for western and northern countries owing to its centralized location between South and North, and East and West. Geographical location also explained Serbia's transformation into a transit centre for East European citizens en route to Western Europe (Nikolić-Ristanović et al. 2004). In terms of geographical linkages by air travel, Mattar (2005) found that the numerous flight connections with many destinations available in Almaty made Kazakhstan a popular Central Asian transit point in trafficking between southern Asian regions and the West.

Second, the existence of insufficient legislation and relatively weak enforcement to address human trafficking and migrant smuggling may contribute towards a country becoming an attractive transit point. With respect to trafficked persons, Clark (2003) argues that weak (or non-existent) legislative protection measures for trafficked persons, especially women, allow traffickers to continue to operate unchallenged because victims fear seeking law enforcement assistance. With respect to perpetrators, Schloenhardt (2001) hypothesizes that the absence of legislation criminalizing the transportation of illegal migrants enhances the likelihood of a country being used as a transit point.

In addition to insufficient legislation, differences between the enforcement capabilities of given jurisdictions to detect illegal entry may make one jurisdiction more attractive as a transit country. Martin and Straubhaar's (2002) comparison of the stringency of controls at the Hungarian/Romanian border crossing of Nagylak-Nadlac illustrates this. At the time, whereas Hungary had obtained European Union (EU) support for digital passport readability and enhanced surveillance technology, including heat-detection devices to scan vehicles, Romania had no such technology. Illegal migrants from the Middle East and Asia were found transiting through Romania to reach Western Europe.

Research has also found that isolated legal action in one jurisdiction to address trafficking in persons and migrant smuggling may result in the shifting of routes. For example, Siron and Van Baeveghem's study of Poland (1999), which at the time was an EU candidate and recognized transit point for human smuggling and trafficking, found that the stringent 1997 Act on Aliens decreased transit trafficking through Poland. However, Twomey (2000) found that the transit movement did not completely disappear, but rather partly shifted to its southern neighbour, the Czech Republic. This suggests that to address illegal migration effectively, coordination of the legal response is necessary.

Third, relatively liberal immigration policies ease the ability of traffickers to transport victims through a transit country (see Kandathil 2005–6: 93). In the EU, the establishment of the Schengen Agreement, which intended to ease legal movement between EU member states, has reportedly facilitated illegal movement from transit to destination countries (Lindo 2006). High volumes of legitimate commercial and traveller movement across an international border may be exploited by traffickers and smugglers (United

States-Canada 2006). The lack of a visa requirement to enter a transit country is considered to be a particular 'pull factor' (Wieschhoff 2001: 42). For example, for almost a decade Canada has been identified as a transit country for women from South Korea who travel visa free to Canada, only to be moved to the US illegally where they face sexual exploitation (US Department of State 2008). As of 12 January 2009, South Koreans no longer required a visa to enter the US, but they must pre-register their intention to travel through the online Electronic System for Travel Authorization and have a 'tamper-proof' biometric passport (The White House 2008).

Finally, an operational criminal infrastructure to facilitate entry into and exit from a country will encourage its use as a transit point. The ability to provide official-looking fraudulent identity documents is a 'growing industry' that international traffickers are utilizing (United States-Canada 2006: 4–5). For example, Kelly (2005) observes that readily available fraudulent passports in Kyrgyzstan encouraged the illegal movement of individuals from Uzbekistan and Tajikistan to transit through Kyrgyzstan. In some instances, criminal groups in the transit country will have ethnic affiliations with origin countries. For example, Nikolić-Ristanović et al. (2004) found that Chinese criminal groups in Hungary were facilitating the illegal entry of Chinese nationals destined for Western Europe.

### **Trafficking in persons and migrant smuggling in transit scenarios**

Transit countries face unique challenges in combating international human trafficking because they are situated in the middle of the international trafficking chain. A primary challenge is distinguishing between trafficked persons and smuggled migrants in individual transit cases. Trafficked persons mistaken for smuggled migrants may be deported and denied protection, thus facing the risk of being re-trafficked.

Although, legally and theoretically, the distinctions between trafficking and smuggling are precise, complexities arise when transit countries are assessing individuals who are being illegally moved across the border but have not yet been subject to exploitation. Trafficking in persons is primarily about the exploitation of an individual. Article 3(a) of the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (the Palermo Protocol) (2003) defines exploitation as: 'at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs'. With migrant smuggling, the purpose is to obtain a financial or other material benefit from procuring illegal entry itself. In other words, '[s]mugglers generate profit from fees to move people', whereas '[t]raffickers acquire additional profits through the exploitation of victims' (UNODC 2008: 5).

Although trafficking may be facilitated by legal or illegal movement of an individual across an international border, movement of any kind is not a required element. Conversely, migrant smuggling always involves illegal entry, defined as 'crossing borders without complying with the necessary requirements for legal entry into the receiving State': UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the

United Nations Convention Against Transnational Organized Crime (Migrant Smuggling Protocol) (2004: Article 3(b)). Therefore, wherever illegal movement of an individual is detected, further inquiry is needed to ascertain whether the individual is being smuggled or trafficked.

In detecting trafficking, as opposed to smuggling, the United Nations Office of the High Commissioner for Human Rights (OHCHR) states that a critical factor is ‘the presence of force, coercion and/or deception’ (OHCHR 2002: Guideline 2). However, while in transit, a trafficked person may actively and willingly seek to travel to the destination country and be unaware that exploitation is their ultimate fate – deception is likely to be exceedingly difficult to detect in transit. In addition to the transported individual’s unawareness, the individuals facilitating such transportation may also intentionally be kept in the dark. These facilitators may be ‘mules’ hired by the individual who will be subjecting the migrant to exploitation at the destination. Generally, where evidence is lacking of the likelihood of future exploitation, the individual will be categorized as being smuggled (United States-Canada 2006). However, this approach runs the risk of under-reporting trafficking in persons cases and heightens the risk of re-trafficking. On the other hand, not all smuggled migrants are destined for exploitation as trafficked persons.

Owing to these inherent informational deficiencies at the transit stage, the precise distinctions between human trafficking and migrant smuggling that are frequently cited to assist destination countries in identifying trafficked persons are often ambiguous while individuals are in transit. To begin to address these limitations, certain indicators may be used to flag individuals as being at high risk of exploitation at their final destination and should be investigated more fully as potential cases of international trafficking in persons. For example, outstanding debt owed by the individuals can raise concern, but may not determine their status. The US Human Smuggling and Trafficking Center (2006) considers that ‘a work-based debt can be an “indicator” of trafficking, and such a situation could trigger further examination to determine whether the aliens are victims of trafficking or extortion’.

Because of the difficulties of accurately assessing individuals entering a transit country illegally, it is important to consider the legal obligations of transit countries related to both human trafficking and migrant smuggling (Chamie and Dall’Oglio 2008).

### **International legal obligations of transit countries**

The lack of certainty about the legal responsibilities of origin, transit and destination countries helps traffickers continue to operate with impunity (Clark 2003). For example, transit countries ‘feel exploited as a “springboard” towards “eldorado” and do not see themselves in a position to deal with the growing numbers of irregular migrants’ (Chamie and Dall’Oglio 2008: 96). However, transit countries bear responsibility to combat trafficking in persons, as do origin and destination countries.

Gekht (2007) acknowledges that, although the responsibilities of various countries on the human trafficking chain vary, transit countries should assume their part of a shared responsibility. This is reflected in the preamble to the Palermo Protocol, which calls for

'a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights'.

Since trafficking involves a series of steps, Mary Robinson, the UN High Commissioner for Human Rights, urged policy makers to implement human rights responses at the transit stage, among other stages (Caraway 2005–6). The Palermo Protocol recognizes the need to afford full respect to the human rights of trafficking victims in the course of affording them protection and assistance (Article 2(b)).

### *Transit countries preventing trafficking in persons*

The Palermo Protocol applies to origin, transit and destination countries in its entirety, but several provisions are particularly relevant for transit country State Parties. First, transit countries have a responsibility to prevent trafficking in persons by exercising due diligence in regulating the entry of foreign nationals into their territory to ascertain if they are at risk of being trafficked persons. Specifically, Article 10(1) of the Palermo Protocol mandates information exchange among law enforcement, immigration and other relevant authorities of States Parties to allow them to identify the types of travel documents, means and methods used to facilitate human trafficking.

Furthermore, Article 11(1) of the Palermo Protocol obliges States Parties, including transit countries, to strengthen measures to prevent and detect trafficking in persons at their borders, while Article 11(6) provides that States Parties 'shall consider strengthening cooperation among border control agencies by, *inter alia*, establishing and maintaining direct channels of communication'. Measures to prevent human trafficking on commercial carriers are elaborated in Articles 11(2)–(3).

In response to the obligations outlined in Article 9 of the Palermo Protocol, transit countries are to establish policies, programmes and other measures, such as socio-economic initiatives, research, information and mass media campaigns in collaboration with non-governmental organizations (NGOs) to prevent trafficking in persons. In addition, Articles 9(4)–(5) specifically require countries combating human trafficking to cooperate multilaterally to alleviate factors that make victims vulnerable, including 'poverty, underdevelopment and lack of equal opportunity', and to diminish demand.

Finally, since falsification of documents can facilitate trafficking, countries are obligated under Article 12 of the Palermo Protocol to ensure the security and control of documents they issue.

### *Transit countries protecting and assisting trafficked persons*

Protection and assistance for trafficked persons are recognized in Articles 6–8 of the Palermo Protocol as important aspects of the governmental response to this problem. Associated notes specify that 'these various obligations apply equally to any State party in which the victims are located, whether a country of origin, transit or destination' (UNODC 2004: 283). For example, Clark (2003) argues that transit countries should develop anti-trafficking legislation that decriminalizes its treatment of trafficked individuals and, in

particular, should enact legislation extending basic services to trafficked individuals, rather than pass the burden on to non-governmental organizations (NGOs), which may have limited resources to provide adequate protection. However, the extent to which transit countries protect and assist trafficked persons identified in transit has not been extensively studied.

Since the definition of a trafficked person in Article 3(a) includes the transportation, transfer, harbouring or receipt of persons by listed means for the *purpose* of exploitation, an individual can be recognized as a trafficked person without experiencing the intended exploitation. Instead, their victimization begins at the recruitment stage and carries on through to the transit stage. Although victims who are exploited will likely have greater rehabilitation needs, individuals who are threatened, forced or coerced, for example, to be transported through a transit country have nevertheless had their fundamental human rights violated. Konrad (2002) also contends that granting residence for trafficked persons to stay in the transit country would break the vicious cycle of re-trafficking and help trafficked individuals recover, reorient and support themselves. Taking a human rights perspective, the UNODC (2008: 368) has recognized several particular violations considered routine for many trafficked persons in transit:

The person experiences initial trauma, becoming aware of the deception and danger he or she is now in. The person is often exposed to dangerous modes of transportation, high-risk border crossings and arrest, threats, intimidation and violence, including rape and other forms of sexual abuse.

Article 8(2) of the Palermo Protocol obliges a state that is returning a trafficking victim to their country of origin or permanent residence to do so ‘with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary’.

### *Transit countries prosecuting traffickers*

Article 5(2) of the Palermo Protocol obliges States Parties to extend criminal liability for trafficking in persons to attempts, participating as an accomplice and organizing or directing others in human trafficking. This would encompass perpetrators in transit countries who receive, transport, transfer or harbour trafficked persons, but only if they had a requisite level of mental fault. However, there are concerns that domestic legislation in some jurisdictions does not clearly criminalize trafficking in persons at the transit stage – where exploitation has not taken place in the transit country, or at all (in the case of interdiction in transit). For example, Twomey (2000) comments that, where the victim and trafficker enter the transit country legally, immigration and criminal offences related to migrant smuggling are unlikely to be available. The UNODC considers traffickers as being ‘often less concerned to conceal and protect themselves from investigation in the States of origin or transit because they feel safer. Joint operations mean that investigators in the origin or transit States can exploit these evidential opportunities and gather valuable corroborative evidence of the recruitment and transportation phases of the crime’ (UNODC 2008: 197). Therefore, domestic legislation should be reviewed to ensure that it extends liability to individuals facilitating trafficking in persons at the transit stage,

with graduated penalties appropriate to the level of mental fault (*mens rea*) of the perpetrator.

### *Standards for transit countries in addressing the trafficking/smuggling dilemma*

Although transit-related obligations in the Palermo Protocol are applicable to States Parties generally, difficulties are likely to arise in individual cases where the smuggling and trafficking distinction blurs. At the transit stage, it would be prudent to err on the side of caution and further investigate the circumstances of an individual case. At any rate, minimum standards for the treatment of individuals who are smuggled migrants are applicable to the case of any foreign national being illegally moved across an international border.

The Migrant Smuggling Protocol establishes some minimum standards for the protection of the rights of individuals who have been smuggled across an international border by ‘an organized criminal group’ (Article 4). The preamble of the Migrant Smuggling Protocol recognizes that ‘the smuggling of migrants can endanger the lives or security of the migrants involved’ and that there is a ‘need to provide migrants with humane treatment and full protection of their rights’.

Whereas the Palermo Protocol elaborates a wide range of protection and assistance for trafficked persons, the Migrant Smuggling Protocol specifically provides only that ‘[m]igrants shall not become liable to criminal prosecution’ (Article 5) on account of being smuggled, and their return to their home state should proceed without undue or unreasonable delay (Article 18). Additional protections for smuggled migrants include the general obligation of States Parties taking measures against vessels suspected of smuggling migrants to ‘[e]nsure the safety and humane treatment of the persons on board’ (Article 9(1)(a)).

The Migrant Smuggling Protocol affirms that general human rights obligations owed by states to individuals apply to smuggled migrants, including in Article 16: ‘the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment’; ‘protection against violence that may be inflicted upon them, whether by individuals or groups, by reason of being the object of [migrant smuggling]’; ‘appropriate assistance to migrants whose lives or safety are endangered by reason of being the object of [migrant smuggling]’; and, in the detention context, obligations under the Vienna Convention on Consular Relations, such as providing consular officials from the smuggled migrant’s country of nationality with the ability to visit and converse with the smuggled migrant, as well as to arrange for legal representation for them (1963, Art. 36(1)(c)). The Migrant Smuggling Protocol also requires States Parties to ‘take into account the special needs of women and children’ (Article 16(4)).

Although the legal requirements imposed on States Parties to the Palermo Protocol and the Migrant Smuggling Protocol reflect different policy approaches to addressing these problems, it is necessary to consider both sets of obligations in formulating a transit country response.

**Table 1.** IOM performance indicators for transit country projects

	<i>Project purpose</i>	<i>Performance indicator</i>
Prevention	Coordinated efforts between origin, transit and destination areas	<ul style="list-style-type: none"> <li>• Joint agreements to promote regular migration flows established/improved (i.e. bilateral agreements for facilitating labour migration)</li> <li>• Number of coordinated information and awareness-raising activities transnationally/between areas</li> </ul>
Protection	Bilateral/multilateral mechanisms established/strengthened between origin, transit and destination areas to provide protection and assistance to victims of trafficking	<ul style="list-style-type: none"> <li>• Regular bilateral and multilateral meetings held</li> <li>• Number of victims of trafficking identified, referred and assisted through bilateral mechanisms</li> </ul>
Prosecution	Cooperative and enforcement mechanisms between origin, transit and destination areas to convict traffickers and protect victims of trafficking are put in place or enhanced	<ul style="list-style-type: none"> <li>• X% of mutual legal assistance requests completed</li> <li>• Average response time of mutual legal assistance requests</li> <li>• Formal agreements established on cooperation between agencies in origin, transit and destination areas</li> <li>• Regular meetings between criminal justice agencies in origin, transit and destination areas are held</li> </ul>

## Engaging transit countries in a comprehensive approach

Calls for origin, transit and destination countries to work collaboratively to address the transnational nature of international trafficking in persons have been mounting for almost a decade (Richard 2000). Although focusing exclusively on the transit country itself can result in a myopic policy outlook, ignoring the role of transit countries is similarly limiting. Challenges related to international migration should be addressed as ‘a shared responsibility’ (Chamie and Dall’Oglio 2008). The IOM’s *Handbook on Performance Indicators for Counter-Trafficking Projects* identifies several high-level objectives and performance measures specifically involving transit countries in a coordinated response to international trafficking in persons, as summarized in Table 1 (IOM 2008: 30, 36, 43).

### *Cooperation between origin and transit countries*

Several scholars have recognized the need for transit countries to enhance efforts to address the root causes of trafficking in countries of origin. Although tightening border control may help transit countries combat trafficking, Narli (2002) finds this insufficient. Instead, Narli calls for contextualizing the global problem of smuggling and trafficking within the social and economic conditions giving rise to trafficking. Likewise, Edwards (2007) suggests that

international instruments such as the UN International Covenant on Economic, Social and Cultural Rights (1966) can be invoked to prevent trafficking because it provides the framework for poverty elimination – a root cause of trafficking. Hence, transit and origin countries should cooperate in improving their respective social and economic conditions.

Meanwhile, Van Impe (2000) endorses transit countries cooperating with countries of origin in developing common policies for preventing human trafficking, especially women and children. Specifically, policies would focus on developing information campaigns to advertise legal immigration routes (Van Impe 2000). In the case of the EU, it is particularly important that transit countries partner with countries of origin in adopting a comprehensive approach that canvasses development, human rights and political issues. Implementation requires, institutionally, that existing and candidate EU member states forge functional ties (Van Impe 2000). Van Impe (2000) further suggests that transit countries need assistance to promote voluntary return.

### *Cooperation between transit and destination countries*

Joint enforcement initiatives by transit and destination countries have been utilized to disrupt both trafficking and smuggling networks at sea and land borders. For example, Belgium and the UK entered into an agreement to reduce the flow of illegal transit migrants seeking to enter the UK from Belgian sea ports. While Belgium stepped up its efforts at major ports to detect illegal migration, the UK initiated its own controls at key Belgian ports and imposed high fines for shipping companies bringing illegal migrants into its jurisdiction. This caused shipping companies to exercise greater diligence, and the collective efforts of the two countries resulted in an increase in interceptions of illegal migrants (Derluyn and Broekaert 2005). However, Derluyn and Broekaert caution that the rise in interceptions may also be attributable to a growing number of individuals seeking to illegally enter the UK through Belgium owing to Belgian asylum policy reforms that reduced the number of refugees accepted.

Canada and the US have combined joint border enforcement initiatives to disrupt illegal migration with systematic intelligence-sharing. Integrated Border Enforcement Teams (IBETs) are composed of multi-agency officers from both Canada and the US, operating along an extensive shared border to identify, investigate and interdict the illegal movement of people and goods. The IBETs are assisted by Integrated Border Intelligence Teams (IBITs) that provide ‘tactical, investigative and strategic intelligence information pertaining to cross border crime between the [US] and Canada’ (United States-Canada 2006: 19).

Capacity-building activities in transit countries by destination countries have been implemented where transit countries are incapable of disrupting illegal migration flows. Albania is a transit country for illegal migration to Italy and the rest of Western Europe (approximately 80 percent of migrants attempting to reach Italy through Albania are third-country nationals) (Martin et al. 2002). Albanian police training and Italian–Albanian marine patrols appear to have reduced illegal entry facilitated by fast boats. The UK Foreign & Commonwealth Office has also funded capacity-building projects in transit countries such as Albania, including an anti-trafficking witness protection and support programme (UK Home Office 2006).

Konrad (2002: 270) observes that whereas cooperation among Western countries, which tend to be destination countries, is high, their cooperation with transit countries and countries of origin is 'sporadic' at best. This suggests that, although cooperation exists, it should be encouraged among countries along the trafficking chain, rather than between clusters of countries that share traits as transit, origin or destination countries.

However, closer cooperation between transit and destination countries has been criticized in some instances. Coming from a refugee protection perspective, Brolan (2002) warns that actions to intercept illegal migrants may risk violating international refugee protection guarantees. The EU has faced criticism for pressing transit countries for migration, such as Libya and the Ukraine, to take on greater responsibility. Concerns were raised by the IOM about the 'ability to fulfil basic obligations, such as proper access to asylum, adequate conditions of detention and protection from return to torture or persecution' (Chamie and Dall'Oglio 2008: 67–8).

### *Protection and assistance for suspected trafficked persons in transit*

There is limited evidence of systematic programmes to protect and assist trafficked persons in transit – possibly because of the difficulties in distinguishing between trafficking in persons and migrant smuggling. Nevertheless, the IOM's counter-trafficking interventions have involved directly assisting trafficked individuals to obtain protection, shelter, health assistance and legal counselling in transit countries (IOM 2006).

In the former Yugoslav Republic of Macedonia, suspected victims of human trafficking were being detained in police stations prior to deportation until the IOM helped the government establish a reception and transit shelter for trafficked women and stranded immigrants (UNODC 2008). Police provide security for the shelter, while the IOM offers medical and counselling support to victims prior to repatriation. By comparison, in Belgium, illegal migrants first have their identities determined by local police, who then contact the Belgian Aliens Office, which determines the documentation the individual will receive and whether they may remain in Belgium or will be transferred to a closed facility (Derluyn and Broekaert 2005).

### *Unaccompanied minors and suspected child trafficking*

Children who are illegal migrants, particularly unaccompanied minors, are typically afforded greater protection owing to their vulnerability and international standards for their treatment. Several jurisdictions have adopted specific programmes and policies directed at identifying minors in transit who are at high risk of being trafficked.

In Belgium, for example, the Aliens Office will issue an unaccompanied minor with a document stating the minor's identity and will order one of three possible outcomes: require the minor to leave the country immediately, to leave within five days, or not to leave the country. The Belgian police must also contact a child protection officer at the Guardianship Office, which will decide between transferring the minor to a child protection institution and allowing the minor to leave the police station. One study of 889 unaccompanied minors identified at a major Belgian port found that a minority of the individuals (15.3 percent) were required to leave the country immediately or within five days, but the majority (82.9 percent)

were issued identity documents and referred to a child protection officer for assessment. However, only in the minority of those cases referred to child protection (32 percent) was the minor transferred to a child protection centre (Derluyn and Broekaert 2005: 31–2).

Several other transit countries have adopted programmes to identify minors at risk of becoming trafficked. For example, in 2001, at the Cambodian/Thai border, a transit shelter in Poipet reportedly reunited 52 out of 96 children (54 percent) with their families (Kurbiel 2004: 79). In 2007, 21 trafficking victim transit centres in Burkina Faso provided care to 312 trafficked children before returning them home within the country, or, in the case of 34 internationally trafficked children, repatriation to their originating countries (US State Department 2008).

Finally, in Canada, the following indicators to identify a ‘probable trafficked child’ at the port of entry have been developed by the British Columbia Office to Combat Trafficking in Persons. One or more of the following are considered to be ‘significant indicators of trafficking’ (Pike 2008):

- travelling with an unrelated person posing as a family member;
- possessing neither personal identification nor travel documents;
- arriving with contact information for persons unknown;
- holding expectations of an unattainable job or education;
- travelling in unsafe and hazardous conditions;
- fearing for the safety of family or self; and
- owing significant amounts of money to a person or group who may have arranged transportation (debt bondage).

Derluyn and Broekaert (2005) recommend that transit countries sufficiently guarantee that the rights of minors will be safeguarded during their interception. Specifically, the transit country should: ensure that the police treat the minors with respect; ensure the minors have facilities to meet their basic needs; and equip all involved authorities with appropriate training on dealing with intercepted unaccompanied minors. Derluyn and Broekaert also recommend that social workers actively play a role in the interception process to provide minors with independent and important information regarding legal procedures, care possibilities and the realities in the destination country.

### *Border controls, identification of trafficked persons in transit and corruption*

The IOM recommends that transit countries prevent trafficking by ‘strengthening border control and providing training to officials to enable them to identify sub-groups of trafficked persons within larger migrant groups moving through their country, legally or illegally’ (IOM 2008: 5). As stressed in the *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, since failure to correctly identify trafficked persons will likely exacerbate the denial of their rights, states owe obligations to ensure such identification occurs (OHCHR 2002).

In carrying out entry and exit point detection, the UK Home Office Crime Reduction Toolkit appears to support a strategy anchored in using ‘multi-agency agreed profiles’, which include profiles of traffickers’ modus operandi, traffickers and (potential) victims

(UK Home Office 2009). The Toolkit highlights that these profiles are especially critical given the likelihood that, at entry, numerous potential victims are not yet aware of the risk of exploitation they may be subject to (UK Home Office 2009). However, the success of such an approach demands up-to-date and accurate criminal intelligence data involving both origin and destination countries.

One of the concerns surrounding any initiative for the effective maintenance of border controls and identification of trafficked persons in transit is the risk of corruption. As such, anti-corruption efforts should be a priority for transit countries. In particular, initiatives to combat corruption should target border guards and other law enforcement officials. Clark (2003), for example, argues that ensuring corruption-free law enforcement is a foundation for other initiatives. Furthermore, the 2008 *Trafficking in Persons Report* has found specific problems in transit countries such as Indonesia, where several immigration officials at key transit points were prosecuted for corruption (US Department of State 2008).

To further reduce the risk of corruption, the UNODC recommends engaging the public in transit countries to identify suspected cases of human trafficking. Well-publicized telephone hotlines, for example, can ‘act as an independent source of advice and guidance to potential victims who may be considering job opportunities or other offers to go abroad; . . . act as a first point of contact providing access to a referral mechanism for victims of trafficking in human beings; and . . . facilitate the anonymous reporting of cases or suspected cases of trafficking in human beings’ (UNODC 2008: 438).

## Conclusion

Transit countries have been relatively under-researched and largely ignored in global efforts to combat international trafficking in persons. However, their function is essential to traffickers who seek efficient and profitable routes to move victims. This article has identified several key characteristics of transit countries, noted a number of critical challenges and highlighted the need to synthesize various legal obligations of transit countries.

This article has also highlighted key provisions in the Palermo Protocol that are vital for transit countries to follow. Rather than admonishing transit countries simply to ‘do more’, these provisions provide a systematic baseline that may be used to assess progress by transit countries and develop recommendations to improve their response to trafficking in persons. Firstly, transit countries must engage in preventing human trafficking by: (a) exercising due diligence in regulating entry of foreign nationals in order to identify individuals who are at risk of exploitation; (b) enhancing cross-border detection and intelligence-sharing capabilities with origin and destination countries to disrupt trafficking networks as well as identify travel documents and means and methods employed by traffickers; (c) ensuring the security and control of transit documents; and (d) contributing towards the alleviation of root causes of trafficking. Since destination countries typically bear the greatest burden in terms of victim protection obligations and enforcement against traffickers, they have a significant interest in preventative efforts to stem the flow of trafficked persons to their borders. Consequently, it is in the interest of destination countries to support and fund programmes in transit countries to combat human trafficking.

Secondly, transit countries must ensure that suspected trafficked persons in transit are afforded protection, including: (a) ensuring such individuals are not subject to criminal prosecution for acts arising from their being trafficked; (b) extending protection and assistance measures to trafficked persons identified in transit; (c) facilitating the voluntary return of the trafficked person where requested by the individual, and, in other cases, returning only with due regard for their safety and the status of legal proceedings related to their status; (d) providing, at a minimum, the standards in the Migrant Smuggling Protocol in all cases of illegal entry; and (e) assessing individuals in transit who have any indicators of being trafficked by well-trained and competent authorities, with child protection officers involved in the case of minors.

Thirdly, transit countries must actively prosecute perpetrators, including: (a) extending criminal liability to individuals involved in the movement of trafficked persons at the transit stage, before exploitation has occurred, and in cases of both legal and illegal entry/exit; and (b) cooperating with destination and origin countries, including through mutual legal assistance and extradition, to prosecute perpetrators throughout the trafficking chain. In particular, the mental element of such criminal offences must suit the nature of some trafficking networks that rely on wilfully blind intermediaries. This may require the enactment of a graduated range of criminal or regulatory offences, applicable to different levels of mental fault (*mens rea*), to ensure that trafficking networks cannot escape liability by employing a series of individuals on a 'need to know' basis. Furthermore, in every discovered international trafficking case, a 'full and complete investigation' principle should apply, such that destination, transit and origin countries work to disrupt the relevant trafficking network as a whole, rather than simply prosecuting the individual who ultimately subjected the trafficked person to exploitation. Without taking these important steps, trafficking networks will continue to facilitate the movement of victims to preferred destination countries.

Finally, this article raises several important areas for further research related to transit countries, including: (1) the development of clearer policies and operational tools to assess suspected trafficked persons in transit; (2) a comparative study of the extent to which trafficked persons have been afforded protection at the transit stage, as well as of the indicators and levels of proof necessary to trigger such protection in various transit jurisdictions; and (3) research into the degree to which destination, transit and origin countries cooperate, after a trafficked person is discovered, to investigate and prosecute individuals involved throughout the trafficking chain (the 'full and complete investigation' principle).

Although it is unacceptable for transit countries to evade any responsibility by claiming that trafficked persons are 'just passing through', these countries face the unique challenge of attempting to address a transnational crime and human rights violation that is still in progress within their borders. The active involvement of transit countries is vital to achieving a comprehensive international response to trafficking in persons.

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