

## Interview with Ilias Chatzis

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*—Dear Mr. Chatzis, first of all, thank you so much for your time and cooperation for this interview. As explained, we would like to provide a general overview to our audience of the phenomena of human trafficking and smuggling of migrants. We are particularly interested in linking UNODC mandate and its programmes with current trends and exploring some of the challenges related to prevention, and protection.*

*Kindly introduce yourself and your current position within the Human Trafficking and Smuggling HTMSS and OCB in the context of UNODC.*

I am the Chief of the Human Trafficking and Migrant Smuggling Section (HTMSS), Organized Crime and Illicit Trafficking Branch, United Nations Office on Drugs and Crime. The core function of HTMSS is to assist Member States to implement the Trafficking in Persons Protocol and the Smuggling of Migrants Protocol, both supplementing the United Nations Convention against Transnational Organized Crime. As a qualified lawyer, I held a number of senior legal positions within UNODC as well as other international organizations prior to my current position.

The Protocols are the first global, legally binding instruments with an agreed definition on trafficking in persons and on smuggling of migrants, respectively. Once countries sign-up to the Protocols, then they need to harmonize national criminal legislation with the Protocols, and thereby enabling efficient international cooperation in investigating and prosecuting trafficking in persons and migrant smuggling crimes. The Protocols also require countries to undertake a series of other measures including for the protection of victims of trafficking as well as for the assistance of vulnerable migrants.

The Section implements technical assistance activities to countries in support of their efforts to implement the two Protocols. This assistance includes the development of practical tools for law enforcers, assistance providers, prosecutors, judges, policy makers and administrators, as well as training and capacity building on the basis of these tools.

The Section is also responsible for inter-agency coordination with other partners such within the United Nations system as well as with other actors including NGOs.

*—Would you kindly provide a general definition on both, trafficking and smuggling? What is the difference between trafficking and smuggling? Why is it such a challenge for many counterparts to differentiate between the two phenomena?*

Trafficking in persons, in accordance with Article 3 of the Protocol, has three constituent elements:

The Act (What is done): Recruitment, transportation, transfer, harbouring or receipt of persons;

The Means (How it is done): Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim;

The Purpose (Why it is done): For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.

In the case of child trafficking only the act and the purpose is enough to consider it a case of trafficking, no means are required.

Trafficking in persons does not necessarily involve crossing a border (it can be internal

trafficking), and often involves ongoing exploitation that generates a benefit, financial or otherwise, for traffickers.

Smuggling of migrants is defined (Article 3 of the Smuggling of Migrants Protocol), as the procurement of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident in order to obtain, directly or indirectly, a financial or other material benefit.

The Protocol requires States not to criminalise migrants for the fact of having been the object of the crime of smuggling (Article 5). The Protocol refers only to the irregular movement of migrants across international borders. The Protocol therefore requires the criminalisation of smuggling, it requires Member States to focus on the smugglers and not on the migrants.

The Smuggling of Migrants Protocol also creates an obligation to establish 'aggravating circumstances' to the crime of smuggling of migrants. These include 'circumstances (a) that endanger, or are likely to endanger, the lives or safety of the migrants concerned; or (b) that entail inhuman or degrading treatment, including for exploitation, of such migrants' (Article 6(3)).

Contrary to the crime of trafficking in persons, smuggling of migrants involves irregular border crossing and entry into another state. The relationship between smuggler and migrant is a commercial transaction, which usually ends after the border crossing. In the crime of smuggling, the commodity is a service: facilitating irregular border crossing for financial or other material benefit and smugglers commit a crime against the state.

However, trafficking and smuggling also have some commonalities that make it difficult for practitioners, service providers as well as for the general public to make the difference:

In both crimes, there is frequent involvement of organised crime.

Both crimes can occur along the same routes and be perpetrated by the same criminals, and people that often start as migrants and are severely exploited and trafficked along the route – as we have seen recently in North Africa and the Mediterranean or in Central America and South-East Asia.

Even though theoretically a smuggling of migrants operation may not include trafficking in persons or other type of exploitation, often smuggled migrants become victims of

other crimes, ill-treatment, violence, or human rights violations

Against this context, it is very important to make clear that trafficking in persons and smuggling of migrants are different crimes that require different responses in law, both with regard to the rights of a person who has been the object of one of these crimes and to the penalty for perpetrators.

From a rights holder's perspective, the confusion between the two crimes often leads to States, courts and service providers failing to identify some migrants victims of trafficking. In accordance with the Trafficking in Persons Protocol, States have an obligation to correctly identify victims of trafficking to ensure that their rights are not further violated and that they can access assistance, protection measures and solutions, including physical and mental health support, witness protection and remedies. In accordance with the Smuggling of Migrants Protocol, States must create a framework to ensure that this identification does take place. States also have an obligation to protect the human rights of all migrants within their jurisdiction, regardless of their immigration status.

So in short there are some key differences:

Smuggling requires crossing of an international border, whereas trafficking can occur within national borders (so called 'internal trafficking').

In trafficking the commodity is a person and in the crime of smuggling, the commodity is a service: facilitating irregular border crossing for financial or other material benefit.

Traffickers commit a crime against individuals and smugglers commit a crime against the state.

Smuggling need not include any form of force, coercion, deception, or abuse of power.

What role does UNODC play in this field? What concrete actions does UNODC develop that are linked to the implementation of both Protocols?

All UNODC actions are oriented towards supporting Member States' implementation of the Protocols. Below in short the main pillars of UNODC's work:

#### 1. Knowledge base expansion:

Globally there is a lack of solid and segregated data and knowledge about the trends, profiles, financial flows, etc. concerning trafficking in persons and the smuggling of mi-

grants. In the case of trafficking in persons, the Global Plan of Action, adopted by the General Assembly (resolution 64/293) mandated UNODC to collect information and publish a bi-annual Global Report on Trafficking in Persons (available here: <https://www.unodc.org/unodc/en/data-and-analysis/glotip.html>). UNODC has been also recently mandated to collect information on smuggling of migrants and will publish a report on main trends in 2018.

UNODC also created the Human Trafficking and the Migrant Smuggling Knowledge Portals that hosts a Case Law Database on officially documented court cases concerning trafficking in person and the smuggling of migrants<sup>1</sup>.

At the same time, UNODC conducts assessments of the criminal justice response to trafficking in persons and migrant smuggling as well as develops national assessments on the situation of human trafficking and migrant smuggling. Most of these assessments remain confidential for use by the beneficiary country.

## 2. Strategy development and policy

UNODC advises on the development of comprehensive and multi-sectoral strategies on the fight against trafficking in persons and the protection of victims of trafficking or the inclusion of the issues into national strategies on migration, security, etc. This is done on the basis of a series of UNODC policy guidance papers such as Issue Papers, framework for action, etc<sup>2</sup>.

## 3. Prevention and awareness raising:

UNODC has developed communication strategies and awareness raising campaigns on trafficking in persons and migrant smuggling. For example, the UNODC Blue Heart Campaign against trafficking in persons has been nationally launched in Brazil, Colombia, Lebanon, Mexico, Nigeria, Panama, Peru, Portugal, Serbia, Spain. The UNODC communication campaign #DeadlyBusiness to prevent and combat migrant smuggling, launched in cooperation with Mexico has been adopted by several countries, including Spain. UNODC also commemorates the annual World Day against Trafficking in Persons – 30 July.

## 4. Ratification and legislative assistance:

UNODC's legislative assistance is meant to (i) facilitate States' ratification or accession to the Trafficking in Persons and the Smuggling of Migrants Protocols by reviewing and amending relevant laws and; (ii) help States that are already parties to implement their obligations under the Protocols by assessing existing laws and bringing them in line with the requirements of the Protocol and related international standards and instruments or by developing new laws to that end.

UNODC carries out gap analysis of the existing national legislation and its compliance with the Protocols. In a second step, UNODC develops recommendations for aligning national legislation with the Protocols' requirements. UNODC further assists in the drafting process by reviewing draft legislation and also by conducting legislative drafting workshops, on the basis of the UNODC Model Laws against trafficking in persons and smuggling of migrants. UNODC also organizes awareness-raising sessions with parliamentarians who would discuss and enact the law(s).

## 5. Capacity development:

UNODC offers different types of trainings to help countries build both their institutional and human resource capacities to adequately respond to trafficking in persons and migrant smuggling. Trainings can be basic ones to raise the awareness of criminal justice practitioners and service providers to provide them the knowledge to identify and investigate migrant smuggling and trafficking in persons cases on the basis of the UNODC Anti-Trafficking and Smuggling Manuals for Criminal Justice Practitioners. UNODC also offers more in-depth as well as specialized trainings following adult-learning techniques as well as supports the establishment of mentors.

*—In what way, does UNODC recognize and consider the multifaceted and transnational characteristics of both crimes/phenomena? In the context of the current situation, could you point out any connection/ overlap between them?*

<sup>1</sup> Trafficking Knowledge Portal: <https://www.unodc.org/cld/en/v3/htms/index.html>  
Smuggling Knowledge Portal: <https://www.unodc.org/cld/en/v3/som/>

<sup>2</sup> The Issue Papers as well as other relevant publications can be accessed here: <https://www.unodc.org/unodc/en/human-trafficking/publications.html?ref=menuse>

Of course, as previously answered under the second question on the definitions, trafficking in persons and smuggling of migrants are two distinct crimes that have however, some commonalities and are closely linked. For example, trafficking and smuggling can occur along the same migratory routes and smuggling can sometimes lead to trafficking and vice versa.

Smuggled persons may not have travel or residency documents, may not speak the language of the country in which they were smuggled, and may be unsure of their rights. They may also be in need of international protection and cannot return home. These conditions of vulnerability create an environment in which the smuggled person is more susceptible to exploitation and trafficking.

At the same time, a person who is a victim of trafficking and has been, for example internally exploited in his or her country or community of origin can be smuggled into another country. It can occur that traffickers decide, for several reasons, to continue the exploitation of a person in another country and then the person, who is already a victim of trafficking and would require assistance and protection, is smuggled into another country and may continue to be exploited.

States have an obligation to correctly and promptly identify victims of trafficking to ensure that their rights are not further violated and that they can access assistance, protection measures and solutions, including physical and mental health support, witness protection and remedies. Therefore, it is paramount for States to create and implement a framework or mechanism for the identification, referral assistance and protection of victims of trafficking and victims of other crimes. At the same time, let me reiterate that States also have an obligation to protect the human rights of all migrants within their jurisdiction, regardless of their immigration status.

*—Considering the definition, you have provided on Human trafficking and Smuggling of migrants before and recognizing the elements - act, means and purpose-, could you please provide some examples of the programmes, projects or actions developed by UNODC in each of the mentioned elements?*

Kindly note that for example a trafficker can apply different means to control the victim (e.g. threats, abuse of a position of vulnerability, coercion, etc.) at different times during the

trafficking situation. In that regard, UNODC works as mentioned under the third question to prevent and combat the crime in a whole. It is also important to note that according to the Trafficking in Persons Protocol, an offence of trafficking in persons should not require that actual exploitation take place. As is clear from the Protocol, actual exploitation need not occur provided there is a manifestation of intention to exploit the individual. All that is required is that the accused committed one of the constituent acts, employing one of the listed means for the purpose or, put another way, with the intention that the individual be exploited.

*—As a consequence of the projects and actions developed, linked within prevention, protection and prosecution (triple P). Could you please unfold some of the trends that you have observed in the last years of your practice identifying some of the challenges for the social work field and social workers in these areas?*

Before answering the question, just a short remark, the fourth p -partnership is equally important to address the crimes.

While Member States have done significant efforts to prevent and address trafficking and smuggling a number of key challenges persist including amongst others: complex legal definition of the two crimes, poor international cooperation to successfully adjudicate cases; links with other crimes (i.e. corruption, terrorism, drug trafficking, forced criminality, money laundering, cyber-crime); and lack of adequate protection and assistance to victims.

The main challenges refer again to the key issue of proper identification and referral of victims and vulnerable migrants. First social workers need to be trained on identification, assistance and protection of victims of trafficking as well as on assessing the vulnerabilities of individuals that may be subject to trafficking or other types of human rights violations. Social workers also need to know the referral system in place in their country. However, the challenge is that still many countries don't have a proper referral or coordination mechanism or the one they have is not fully implemented.

Another important challenge nowadays is the issue of resources and budget allocation. Countries can have a national action plan or a national strategy to combat trafficking in persons or smuggling of migrants in place. This

plan and/or strategy can include a section on protection and assistance, however, as unfortunately is sometimes the case, there are no resources allocated. Therefore, the first step is to invest in improving the knowledge, skills and capacities of social workers and service

providers in general, and as a second step; to make the means available. A third step, and this is one UNODC is also strongly pursuing; is to monitor and evaluate the work done and improve it based on lessons learned and good practices identified.