

Introduction

The term “migrant smuggling” refers to the unauthorized movement of individuals across national borders for the financial or other benefit of the smuggler. More simply, it can be understood as facilitating the breach of migration laws for profit. Although aspects of illegally facilitated migration are established criminal offenses in many countries, such practices were not the subject of international legal regulation until very recently. It was only in the late 1990s that the international community came together under the auspices of the United Nations to formulate a common understanding of what migrant smuggling is, and to adopt a treaty-based cooperation framework that would support a coherent response. The impetus for this development was readily apparent. Irregular migration¹ to key destination States, particularly the United States of America and parts of Europe, had grown sharply in the 1980s and 1990s. This was increasingly characterized by professionalization of migrant smuggling; a foreseeable and logical consequence of tighter immigration controls to the preferred destinations at a time when demand for such migration was rising rapidly. A focus on the facilitators of irregular migration, rather than just the migrants themselves, was widely viewed by destination States as a critical element in any effective response. The result of that process was a specialist legal regime comprising the Migrant Smuggling Protocol² and its parent instrument the

- ¹ Terminology around the issues addressed in this book is highly contested and international legal rules do not offer a clear way forward. The authors use the term “smuggled migrant” to refer to an individual whose entry or stay in a country is unlawful and has been facilitated by a third party for profit. When addressing the broader migration phenomenon of which migrant smuggling forms a part, the book eschews the pejorative and inaccurate “illegal migrant/migration” in favor of “irregular migrant/migration.” Other terms in increasingly common use and generally equivalent accepted meaning are “undocumented migrant/migration” and “unauthorized migrant/migration.”
- ² Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2241 UNTS 507, done Nov. 15, 2000, entered into force Jan. 28, 2004 [Migrant Smuggling Protocol].

Cambridge University Press

978-1-107-01592-0 - The International Law of Migrant Smuggling

Anne T. Gallagher AO and Fiona David

Excerpt

[More information](#)

United Nations Convention against Transnational Organized Crime.³ In addition to defining smuggling, the Protocol and Convention detailed a range of obligations on States: from criminalizing migrant smuggling and related offenses to cooperating in the exchange of information, evidence, and intelligence.

The novelty of the issue contributed to a general perception that the regime around migrant smuggling established by the Organized Crime Convention and Migrant Smuggling Protocol was a complete or self-contained one. However, as this book will demonstrate, the relevant international legal framework is older and considerably broader; comprising 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. Long-standing international principles establishing the rules of sovereignty and jurisdiction dictate the capacity of States to act against migrant smuggling. Equally distinguished principles place a range of limitations on that capacity. The secondary rules of international law are also vital: most particularly in attributing responsibility for internationally wrongful acts associated with migrant smuggling as well as with State responses.

It is this broader framework that is the focus of the present work, and the explicit purpose of the book is to set out the framework in a way that is as clear as its complexities, overlaps, and occasional inconsistencies allow. To date this has not yet been done. Scholarly legal writings on migrant smuggling have tended to focus solely on a single aspect of the Protocol,⁴ or on the link between the Protocol and refugee law,⁵ or on the link between migrant smuggling and human rights,⁶ or migrant smuggling by sea.⁷ Broader studies on various aspects of “international

³ United Nations Convention against Transnational Organized Crime, 2225 UNTS 209, done Nov. 15, 2000, entered into force Sept. 29, 2003 [Organized Crime Convention].

⁴ See, for example, A. Schloenhardt and H. Hickson, “Non-Criminalization of Smuggled Migrants: Rights, Obligations, and Australian Practice under Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea, and Air,” *International Journal of Refugee Law*, first published online Mar. 12, 2013; and T. Obokata, “The Legal Framework concerning the Smuggling of Migrants at Sea under the UN Protocol on the Smuggling of Migrants by Land, Sea and Air,” in B. Ryan and V. Mitsilegas eds., *Extraterritorial Immigration Control: Legal Challenges* 151 (2010), at 151.

⁵ See, for example, C. Brolan, “An Analysis of the Human Smuggling Trade and the *Protocol against the Smuggling of Migrants by Land, Air and Sea* (2000) from a Refugee Protection Perspective” (2002) 14(4) *International Journal of Refugee Law* 561; F. Crépeau, “The Fight against Migrant Smuggling: Migration Containment over Refugee Protection,” in J. van Selm, K. Kamanga, J. Morrison, A. Nadig, S. Špoljar-Vržina, and L. van Willigen eds., *The Refugee Convention at Fifty: A View from Forced Migration Studies* 173 (2003) [Crépeau, “The Fight against Migrant Smuggling”]; and Z. Kasli, “Criminalising and Victimising the Migrant: Reflections on the UN Protocol and UNHCR’s Position against Smuggling” (2011) 1(2) *Oxford Monitor of Forced Migration* 64.

⁶ See, for example, T. Obokata, “Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law” (2005) 17(2) *International Journal of Refugee Law* 394.

⁷ See P. Mallia, *Migrant Smuggling by Sea: Combating a Current Threat to Maritime Security through the Creation of a Cooperative Framework* (2009).

Cambridge University Press

978-1-107-01592-0 - The International Law of Migrant Smuggling

Anne T. Gallagher AO and Fiona David

Excerpt

[More information](#)

migration law” tend to consider migrant smuggling incidentally, if at all.⁸ Much stronger contributions to fleshing out important parts of the legal framework have in fact come from other sources: most particularly recent scholarship around extraterritorial immigration control,⁹ and a considerably longer line of work on the irregular movement of asylum-seekers, including by sea.¹⁰ The lack of a unified and comprehensive body of scholarship that seeks to describe and analyze the many legal dimensions of “migrant smuggling” is not on the whole surprising. The categorization is, in many senses an artificial one, and it is certainly much easier to consider a single angle on “migrant smuggling” or to examine the issue incidental to, or from the perspective of, a more established field of study. In attempting to fill the lacuna in the available literature the authors are acutely aware of the risks that inevitably accompany the generalist’s efforts to synthesize rules and norms drawn from a wide range of well-trodden and carefully guarded specialist fields.

UNDERSTANDING THE ISSUES: SOME ILLUSTRATIVE CASE STUDIES

The nature of this book, a scholarly text focused squarely on capturing and analyzing the relevant legal rules, means that it is not particularly well served by a lengthy introduction that seeks to map the phenomenon of migrant smuggling. The reader may take advantage of data and analysis available elsewhere that amply describes how migrant smuggling happens as well as causes, manifestations, and trends.¹¹ In terms of scope it suffices at this point to note that current estimates place the

⁸ See, for example, B. Opekin, R. Perruchoud, and J. Redpath-Cross, eds., *Foundations of International Migration Law* (2013).

⁹ See, for example, in B. Ryan and V. Mitsilegas eds., *Extraterritorial Immigration Control: Legal Challenges* (2010); M. den Heijer, *Europe and Extraterritorial Asylum* (2012); T. Gammeltoft-Hansen, *Access to Asylum: International Refugee Law and the Globalisation of Migration Control* (2011).

¹⁰ See, for example, J. Pugash, “The Dilemma of the Sea Refugee: Rescue without Refuge” (1977) 18 *Harvard International Law Journal* 577; R. P. Schaffer, “The Singular Plight of Sea-Borne Refugees” (1978–1980) 8 *Australian Yearbook of International Law* 213; P. Monzini, “Migrant Smuggling via Maritime Routes” (*CeSPI – Centro Studi di Politica Internazionale*, 2004).

¹¹ See, for example, United Nations Office on Drugs and Crime, *Migrant Smuggling in Asia: A Thematic Review of Literature* (2012), for a systematic review of more than 100 primary research studies on migrant smuggling in relation to fourteen countries; United Nations Office on Drugs and Crime, *The Role of Organized Crime in the Smuggling of Migrants from West Africa to the European Union* (2011); United Nations Office on Drugs and Crime, *Issue Paper: Smuggling of Migrants by Sea* (2011); and United Nations Office on Drugs and Crime, *Issue Paper: Smuggling of Migrants by Air* (2010). See also A. Triandafyllidou and T. Maroukis, *Migrant Smuggling: Irregular Migration from Asia and Africa to Europe* (2012); and D. Kyle and R. Kozlowski eds., *Global Human Smuggling: Comparative Perspectives* (2nd ed. 2011). For a detailed study of migrant smuggling from the perspective of a single country of destination, see I. C. van Liempt, *Navigating Borders: Inside Perspectives on the Process of Human Smuggling into the Netherlands* (2007).

Cambridge University Press

978-1-107-01592-0 - The International Law of Migrant Smuggling

Anne T. Gallagher AO and Fiona David

Excerpt

[More information](#)

number of irregular migrants worldwide at up to thirty million¹² and that a substantial proportion of these persons can be expected to have used the services of smugglers at one or more points in their journey.

The following brief case studies have been selected with the broader purpose of the book in mind. They are not intended to provide a comprehensive, or even a representative overview of migrant smuggling. Their goal is much more modest: to illustrate how smuggling has occurred and continues to happen, to explain how it intersects with other forms of migration and other practices that have been separately criminalized such as torture, rape, or trafficking in persons, to allude to the range of legal issues that may arise in migrant smuggling cases, particularly refugee law, and to provide at least a preliminary insight into the attitudes and behaviors that both shape and reflect how migrant smuggling is considered and dealt with by States and the international community. The case studies are also an expository tool, referred to at appropriate points throughout the book to illustrate a particular finding, insight, or point of law.

The Golden Venture: Smuggling of Chinese Migrants into the United States

In 1993, a Chinese vessel, the *Golden Venture*, was deliberately run aground off the coast of New York. The 286 Chinese migrants crowded “like animals”¹³ onboard who had each paid (or committed to pay after arrival) up to USD40,000 for a place on the vessel, were advised to jump into the sea and swim to shore. Ten died, of drowning or hypothermia, and most of the survivors were deported back to China.¹⁴

¹² International Organization for Migration, *World Migration Report* (2010) [IOM, *World Migration Report*], at 29. However, it is important to note that all available estimates around irregular migration, including those related to smuggling, are highly unreliable. For example, a European Union (EU) funded report noted in 2005 that the main EU database for irregular migration “is wholly inadequate to capture levels and trends in illegal migration processes and is therefore – in its current form – insufficient to guide European policy making on illegal migration”: M. Jandl and A. Kraler, “Statistics on Refusals, Apprehensions and Removal: An Analysis of the CIREFI Data,” in M. Poulain, N. Perrin, and A. Singleton eds., *THESIM: Towards Harmonized Statistics on European Migration* 271 (2006), at 285. The International Organization for Migration has also pointed out that “Data on stocks and flows of irregular migration, at the local, national, regional and global levels, vary widely and are usually imprecise. There is also a lack of comparable data, both over time and between locations. In the absence of an authoritative single source on irregular migrant numbers, analysis inevitably depends on widely fragmented sources, some of which are significantly out of date. Nevertheless, there is a general consensus that the number of irregular migrants has grown in recent years”: IOM, *World Migration Report*, at 29.

¹³ J. P. Fried, “Mastermind of *Golden Venture* Smuggling Ship Gets 20 Years,” *New York Times*, Dec. 2, 1998, citing Judge Reena Raggi of the United States District Court of Brooklyn.

¹⁴ A. J. Sein, “The Prosecution of Chinese Organized Crime Groups: The Sister Ping Case and Its Lessons” (2008) 11(2) *Trends in Organized Crime* 157, at 163. See also S. X. Zhang, *Chinese Human Smuggling Organizations: Families, Social Networks, and Cultural Imperatives* (2008), at 10, esp. note 3 [Zhang, *Chinese Human Smuggling Organizations*]. For further analysis of the incident see

Cambridge University Press

978-1-107-01592-0 - The International Law of Migrant Smuggling

Anne T. Gallagher AO and Fiona David

Excerpt

[More information](#)

Those who remained in the United States were detained for years. A few received asylum. Others were granted limited residency rights but formal regularization of their status has not occurred. More than twenty individuals were prosecuted for their involvement in the incident including “Sister Ping,” the alleged mastermind of “a conglomerate built upon misery and greed” who had amassed over forty million dollars from migrant smuggling.¹⁵ The political impact of the incident was considerable. In the context of a decade of surges of boat arrivals from near neighbors, this incident prompted the release of a presidential action plan to combat alien smuggling¹⁶ and directly led to a significant increase in penalties for migrant smuggling in the United States.¹⁷ It also highlighted the growing phenomenon of organized movement of migrants from China,¹⁸ thereby feeding unease amongst affected States, who quickly began pushing for greater international legal cooperation on the issue: helping to lay the political ground for what was to become the United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air.¹⁹

P. Radden Keefe, “The Snakehead: The Criminal Odyssey of Chinatown’s Sister Ping,” *The New Yorker*, Apr. 24, 2006 [Radden Keefe, “The Snakehead”].

¹⁵ Radden Keefe, “The Snakehead.”

¹⁶ The White House, Washington (United States), “Memorandum: Presidential Decision Directive/ NSC-9 on Alien Smuggling,” June 18, 1993, available at www.fas.org/irp/offdocs/pdd/pdd-9.pdf (accessed May 12, 2013), also noted in “Measures to Combat Alien Smuggling: Report of the Secretary-General,” UN Doc. A/49/350, Aug. 30, 1994, at para. 85.

¹⁷ See generally, R. A. Pedrozo, “International Initiatives to Combat Trafficking of Migrants by Sea,” in J. N. Moore and M. H. Nordquist eds., *Current Maritime Issues and the International Maritime Organization* 53 (1999), at 55. Prior to the *Golden Venture* incident, migrant smugglers caught in the United States typically served between six to eighteen months in prison. The Violent Crime Control and Law Enforcement Act of 1994 increased the basic penalty for migrant smuggling to ten years imprisonment. Penalties of up to twenty years imprisonment were added for migrant smuggling involving injury or risk to life, and migrant smuggling resulting in death was made a capital offense. See also Zhang, *Chinese Human Smuggling Organizations*, at 136.

¹⁸ For example, in 1994 the United States reported to the United Nations “an alarming increase in the smuggling by sea of illegal immigrants from China during the last four years ... interceptions ... increased from fewer than two dozen persons in 1991 to over 3,000 [in the past several months]”: “Measures to Combat Alien Smuggling: Report of the Secretary-General,” UN Doc. A/49/350, Aug. 30, 1994, at para. 81. For an analysis of the various factors giving rise to the migrant smuggling trade from China, most particularly from Fujian province, see S. X. Zhang and M. S. Gaylord, “Bound for the Golden Mountain: The Social Organization of Chinese Alien Smuggling” (1996) 25(1) *Crime, Law, and Social Change* 1; Z. Liang and W. Ye, “From Fujian to New York: Understanding the New Chinese Immigration,” in D. Kyle and R. Koslowski eds., *Global Human Smuggling: Comparative Perspectives* 187 (2001); Zhang, *Chinese Human Smuggling Organizations*; and J. Blatt, “Recent Trends in the Smuggling of Chinese into the United States” (2007) 15 *Willamette Journal of International Law and Dispute Resolution* 227. See also the contributions to P. J. Smith ed., *Human Smuggling: Chinese Migrant Trafficking and the Challenge to America’s Immigration Tradition* (1997).

¹⁹ D. McClean, *Transnational Organized Crime: A Commentary on the UN Convention and Its Protocols* (2007), at 21–24; and D. Vlassis, “The Global Situation of Transnational Organized Crime, the Decision of the International Community to Develop an International Convention and the

Cambridge University Press

978-1-107-01592-0 - The International Law of Migrant Smuggling

Anne T. Gallagher AO and Fiona David

Excerpt

[More information](#)*Australia Refuses Entry to Vessel Carrying Rescued Smuggled Migrants*

In August 2001, the Norwegian registered tanker the *MV Tampa*, traveling from Western Australia toward Singapore, was requested by Australian authorities to proceed to a vessel in distress. The vessel, located with Australian assistance, was found approximately 158 miles from Indonesia, and 85 miles north of Christmas Island, a territory of Australia. The 438 persons on board, mostly asylum-seekers from Afghanistan, were successfully rescued. The captain set course for the nearest suitable port in Indonesia but acceding to pressure from the rescued passengers, changed course and headed to Christmas Island. The vessel was instructed by Australian authorities to stop before it entered the Australian territorial sea and the Master of the vessel was threatened with prosecution for ‘people-smuggling’ offenses if he did not comply. Requests for medical and other assistance were not met for two days until a formal distress call was issued. The Master then entered Australian territorial waters without permission, stating that his vessel was unseaworthy for travel to Indonesia and that some passengers were in extreme medical distress. Australian military personnel boarded the vessel and denied disembarkation to the rescued passengers. The Master maintained the ship’s position for five days, during which time only basic supplies and medical assistance were provided. The rescued persons were then moved on to an Australian military vessel and transferred to Nauru, an island country of Micronesia, which had agreed to process the rescuees at Australian expense. The Indonesian crew was transported to Christmas Island and charged with “people smuggling” offenses under Australian law. Within Australia, legal action was taken against the Australian government but the actions of the government were held to be constitutional. Within weeks legislation was introduced into the Commonwealth Parliament to retrospectively validate the actions of the government, to remove the right of court action, and to excise Christmas Island and other offshore territories from the full protection of Australian law. The incident also marked the introduction of the “Pacific Solution” whereby smuggled asylum-seekers who arrived by boat were transferred to detention centres on Nauru and Papua New Guinea, while their asylum claims were processed. At the international level the incident sparked a comprehensive review of laws and regulations around rescue at sea. The captain of the *MV Tampa* received Norway’s highest civic award.²⁰

Negotiation Process,” in United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, *Annual Report for 2000 and Resource Materials Series No. 59* 475 (2002).

²⁰ The “*Tampa* incident” has been subject to intense examination and discussion. For forensic accounts of the broader political environment within which it played out, see D. Marr and M. Wilkinson, *Dark Victory* (2003); and P. Mares, *Borderline: Australia’s Response to Refugees and Asylum Seekers*

Cambridge University Press

978-1-107-01592-0 - The International Law of Migrant Smuggling

Anne T. Gallagher AO and Fiona David

Excerpt

[More information](#)*Italy Turns Back Smuggled Migrants Intercepted on the High Seas*

Between 2000 and 2012, the governments of Italy and Libya concluded a number of agreements, many of them in secret, aimed at controlling migrant smuggling into Italy.²¹ Their focus was on “shared management” of migration flows and the “repatriation of migrants in an irregular situation.”²² The agreements envisaged joint maritime patrols to “be conducted in Libyan and international waters under the supervision of Libyan personnel and with participation by Italian crew members, and in Italian and international waters under the supervision of Italian personnel and with participation by the Libyan crew members.”²³ The impact of the agreements and the joint patrols in particular has been substantial. For example, in May 2009, the Italian Interior Minister informed the Senate that the agreements with Libya had supported the recent high seas interception of 471 irregular migrants and their subsequent return to Libya.²⁴ One of these interceptions involved a flotilla of three vessels, intercepted on the High Seas on May 6, 2009, by Italian authorities. The Eritrean and Somali migrants on board were transferred onto Italian military ships and, within hours, handed over to Libyan authorities in the Port of Tripoli.²⁵ It was alleged that during the voyage the Italian authorities did not inform passengers of their real destination; took no steps to identify them; and confiscated all personal effects, including identity

in the Wake of the Tampa (2002). For an examination of the legal implications of the *Tampa* incident (which are considered further in Chapter 6), see D. Rothwell, “The Law of the Sea and the *MV Tampa* Incident: Reconciling Maritime Principles with Coastal State Sovereignty” (2002) 13(2) *Public Law Review* 118; P. Mathew, “Australian Refugee Protection in the Wakes of the *Tampa*” (2002) 96 *American Journal of International Law* 661; J. Hathaway, “Immigration Law Is Not Refugee Law,” in *U.S. Committee for Refugees World Refugee Survey 2001*, June 2001, at 38–45; M. Crock, “In the Wake of the *Tampa*: Conflicting Visions of International Refugee Law in the Management of Refugee Flows” (2004) 12 *Pacific Rim Law and Policy Journal* 49; M. White, “*Tampa* Incident: Shipping, International and Maritime Legal Issues” (2004) 78 *Australian Law Journal* 101; and D. Guilfoyle, *Shipping Interdiction and the Law of the Sea* (2009), at 198–208.

²¹ These agreements, although not public, are discussed extensively in *Hirsi Jamaa and Others v. Italy*, (2012) 55 EHRR 21 (ECHR, Feb. 23, 2012) [*Hirsi Jamaa v. Italy*] and in Chapter 1, at Section 1.3.2.2.

²² Y. Maccanico, *The EU’s Self-interested Response to Unrest in North Africa: The Meaning of Treaties and Readmission Agreements between Italy and North African States* (2012), at 4.

²³ Cited in *Hirsi Jamaa v. Italy*, at para. 19.

²⁴ *Ibid.* at para. 13.

²⁵ This situation was the subject of an action in the European Court of Human Rights, brought by twenty-four Eritrean and Somali nationals from among that larger group of intercepted and returned migrants. The Court in this case was required to consider a number of questions including whether the actions of the Italian authorities amounted to a violation of the prohibition of *non-refoulement*, even though they took place outside the territory of Italy, and whether those same actions otherwise violated other provisions of the European Convention on Human Rights, including Article 3 (prohibition on torture and inhuman treatment); and Article 4 (prohibition on collective expulsion). See *Hirsi Jamaa v. Italy*.

Cambridge University Press

978-1-107-01592-0 - The International Law of Migrant Smuggling

Anne T. Gallagher AO and Fiona David

Excerpt

[More information](#)

documents.²⁶ Shortly after this incident the Italian government stated that in its view the return of migrants to the country from which they departed or through which they transited in this way was in full conformity with the Organized Crime Convention and the Migrant Smuggling Protocol.²⁷ The government further expressed the view that a State Party's ships may stop and board any vessel without nationality, if it is suspected of illegally transporting or smuggling migrants, and may return to a Requesting State those foreigners who left from that country.²⁸

Smuggled Migrants Left to Die in the Mediterranean

In 2011, during the civil uprising in Libya, a small rubber boat departed Tripoli with seventy-two passengers bound for Italy. After two weeks at sea, the boat drifted back to Libya with only nine survivors. The Council of Europe subsequently reported that: "No one went to the aid of this boat, despite a distress call logged by the Italian Maritime Rescue Coordination Centre, which pinpointed the boat's position. There were also a number of alleged direct contacts between the boat in distress and other vessels, including a helicopter that dropped biscuits and water, but never returned, two fishing vessels, both of which refused to provide assistance, and a large military vessel which came into close contact with the boat, but ignored obvious distress signals."²⁹ The North Atlantic Treaty Organization (NATO), which reportedly had patrol boats in the area and would have been in a strong position to help identify those official vessels that made contact with the boat, refused to cooperate with Council of Europe investigators. No NATO Member State provided any information to help the investigation.³⁰

²⁶ Ibid. at para. 11.

²⁷ Council of Europe, "Report to the Italian Government on the Visit to Italy Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009," Doc. CPT/Inf (2010) 14, Apr. 28, 2010, at para. 15.

²⁸ Ibid. Italy provided substantial additional legal justifications for both the interceptions and returns in "Response of the Italian Government to the Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on Its Visit to Italy from 27 to 31 July 2009," Doc. CPT/Inf (2010) 15, Apr. 28, 2010.

²⁹ Council of Europe, Parliamentary Assembly, *Lives Lost in the Mediterranean Sea: Who Is Responsible?* (Report of the Committee on Migration, Refugees and Displaced Persons, Doc. 12895, Apr. 5, 2012) [Council of Europe Parliamentary Assembly Report, *Lives Lost in the Mediterranean Sea*], at 1. For a forensic account of every aspect of the incident including a detailed mapping of all responses and copies of all available documentation, see C. Heller, L. Pezzani, and Situ Studio, *Report on the "Left-To-Die Boat"* (2012), available at www.forensic-architecture.org/publications/report-on-the-left-to-die-boat/ (accessed May 12, 2013).

³⁰ Council of Europe Parliamentary Assembly Report, *Lives Lost in the Mediterranean Sea*, at 14.

Cambridge University Press

978-1-107-01592-0 - The International Law of Migrant Smuggling

Anne T. Gallagher AO and Fiona David

Excerpt

[More information](#)*Understanding the Issues: Some Illustrative Case Studies*

9

Exploitation and Torture of Smuggled Eritrean and Sudanese Migrants on the Sinai Peninsula

In late 2010, reports began to emerge about well-organized criminal smuggling networks operating in the Sinai, who are paid by Eritrean and Sudanese migrants, many of them asylum-seekers, for access to and passage through the Sinai Peninsula into Israel. Some migrants get through relatively unscathed. However, others are imprisoned for weeks or months until their relatives abroad pay large ransoms to secure their release. Those unable to pay are kept in captivity and forced to work off their debt. Severe violence including sexual violence is inflicted upon victims, some of whom are children. There has been little response from Egyptian authorities and very few exploiters have been arrested or prosecuted. Reports indicate complicity or active involvement on the part of Sudanese, Eritrean, and Egyptian officials and a failure of Egyptian authorities to investigate elements of the crime that are taking place in their territory.³¹

Deaths of Smuggled Migrants through Suffocation

United Kingdom 2000: Fifty-eight Chinese migrants were found dead in an air-tight lorry container of tomatoes at the port of Dover. They and the two survivors had each paid 20,000 British pounds to travel to the United Kingdom. After a joint investigation by United Kingdom and Dutch officials, the Dutch lorry driver was convicted of manslaughter and conspiracy to smuggle immigrants and jailed for fourteen years. Additional prosecutions were sought and secured in Hong Kong and the Netherlands.³²

³¹ For background information see F. Pleitgen, *Death in the Desert* (A CNN Freedom Project Documentary, Cable News Network, 2011), online video available at <http://thecnnfreedomproject.blogs.cnn.com/2011/11/08/death-in-the-desert> (accessed May 12, 2013); Human Rights Watch, *Egypt: End Sinai Nightmare for Migrants* (Sept. 5, 2012), available at www.hrw.org/news/2012/09/05/egypt-end-sinai-nightmare-migrants (accessed May 12, 2013); Ahmad Abu Draa, *African Migrant Smuggling Gangs Turn Sinai into Land of Torture*, Al-Masry Al-Youm (Egypt), (July 11, 2012) (English language translation by Nola Abboud, *Inside African Migrants' Perilous Journey to Israel* (July 19, 2012), available on Almonitor, at <http://www.al-monitor.com/pulse/security/01/07/al-masri-al-yawm-african-migrant.html#ixzz2Ep5R2cwj> (accessed May 12, 2013); B. Gittleson, "Inside Sinai's Torture Camps," *The Atlantic*, Nov. 14, 2012; and Physicians for Human Rights–Israel, *Hostages, Torture, and Rape in the Sinai Desert: A PHR-Israel Update about Recently Arriving Asylum Seekers* (Dec. 13, 2010), available at <http://www.phr.org.il/default.asp?PageID=100&ItemID=953> (accessed May 12, 2013). For a more detailed review of the situation including an examination of the relationship between human trafficking and migrant smuggling, see M. van Reisen, M. Estefanos, and C. Rijken, *Human Trafficking in the Sinai: Refugees between Life and Death* (2012).

³² See A. Brookes, "China Arrest in Dover Deaths Inquiry," *BBC News* (online), Jan. 27, 2001, available at <http://news.bbc.co.uk/2/hi/asia-pacific/139564.stm>; "Driver Jailed over Immigrant Deaths," *BBC*

Cambridge University Press

978-1-107-01592-0 - The International Law of Migrant Smuggling

Anne T. Gallagher AO and Fiona David

Excerpt

[More information](#)

Thailand 2008: A group of 121 Myanmar migrants who had paid smugglers to transport them through Thailand in a seafood container lorry began to suffocate after the air-conditioning unit failed. They managed to alert the driver who refused to stop. Fifty-four migrants, mostly women, had died by the time the container was opened. No arrests were made, except of survivors who were quickly deported back to Myanmar.³³

Tanzania 2012: In June 2012 a group of 113 migrants being smuggled through Tanzania to South Africa in a closed truck began to suffocate. By the time the driver stopped, forty-three migrants had died. The Deputy Home Affairs Minister was reported to have commented: “It is extremely sad and unfortunate that people die by using wrong and self-torturing means to illegally transport themselves to other destinations.”³⁴ To date, no arrests have been made.

*The United States–Mexico Border: Violence against,
and Exploitation of, Smuggled Migrants*

Mexican drug trafficking cartels are increasingly moving into the highly lucrative business of exploitative migrant smuggling. Security analysts have explained this shift as being caused, at least in part, by the “increased difficulty and danger involved in moving migrants over the Mexican border and into the United States.”³⁵ The groups extort fees from migrants for safe passage across the border, and sometimes

News (online), Apr. 5, 2001, available at http://news.bbc.co.uk/2/hi/uk_news/1258240.stm; “14 years for Dover Tragedy Lorry Driver,” *The Guardian* (online), Apr. 5, 2001, available at www.guardian.co.uk/uk/2001/apr/05/immigration.immigrationandpublicservices; and on the Hong Kong co-conspirator see “People Smuggler Gets Four Tears for Dover Migrant Deaths,” *The Sun-Herald* (online), Feb. 9, 2003, available at www.smh.com.au/articles/2003/02/08/1044579986552.html (all articles in this note accessed May 12, 2013). For a broader contextual overview of the Israeli response, see T. Kritzman-Amir and T. Spijkerboer, “On the Morality and Legality of Borders: Border Policies and Asylum Seekers” (2013) 26 *Harvard Human Rights Journal* 1.

³³ See I. MacKinnon, “54 Burmese Migrants Suffocate in Packed Lorry,” *The Guardian* (online), Apr. 11, 2008, available at <http://www.guardian.co.uk/world/2008/apr/11/burma.thailand> (accessed May 12, 2013); Human Rights Watch, *From the Tiger to the Crocodile: Abuse of Migrant Workers in Thailand* (2010), at 90 and note 226. For a useful and detailed analysis of this case see E. Gjerdingen, “Suffocation Inside a Cold Storage Truck and Other Problems with Trafficking as ‘Exploitation’ and Smuggling as ‘Choice’ along the Thai-Burmese Border” (2009) 26 *Arizona Journal of International and Comparative Law* 699.

³⁴ See S. Chhatbar (Associated Press), “43 Ethiopians, Somalis Suffocate in Truck Smuggle,” *The Washington Times* (online), June 27, 2012, available at <http://www.washingtontimes.com/news/2012/jun/27/43-ethiopians-somalis-suffocate-truck-smuggle/> (accessed May 12, 2013). See also “Migrants Suffocate to Death in Tanzania,” *Al Jazeera English* (online), June 27, 2012, available at <http://www.aljazeera.com/news/africa/2012/06/201262761257192287.html> (accessed May 12, 2013).

³⁵ See Stratfor, *The Global Intelligence Files*, WikiLeaks, Oct. 2011, available at http://wikileaks.org/gifiles/docs/161548_re-forcomment-cartels-and-human-smuggling-trafficking.html (accessed May 12, 2013).