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How Should Migrant Smuggling be Confronted?



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How Should Migrant Smuggling be Confronted?

Jørgen Carling

Executive summary

Migrant smuggling is seen as antithetical to safe, orderly and regular migration. In fact, the fight against migrant smuggling stands out as a point of agreement in an otherwise fractured policy field.

This apparent unity obscures disparate motivations for counter-smuggling measures. Traditionally, concerns about illegal work and residence have been prominent. More recently, the fight against migrant smuggling is also driven by states' desire to minimize the obligations that follow from the 1951 refugee convention. These are just two out of eight motivations identified in the paper.

The eight motivations for counter-smuggling efforts differ with respect to explicitness and legitimacy. Insufficient clarity of purpose makes it more challenging to develop a sound response.

Counter-smuggling strategies can be divided between those that seek to suppress the supply of smuggling services and those that seek to suppress demand. The conventional law-enforcement approach concentrates on curbing supply.

Sustainable solutions are only possible with a reduced demand for migrant smuggling services. But demand-oriented policy approaches go to the heart of migration management and raise political, legal, economic, and ethical dilemmas.

Demand can be suppressed in two contrasting ways. First the use of migrant smuggling services can be rendered needless by providing prospective clients with alternative means for reaching their objectives. Second, the use of migrant smuggling services can be rendered futile by removing the benefits of being smuggled. The latter strategy can have worrying humanitarian implications.

Strategies for countering migrant smuggling have diverse consequences—beyond being more or less effective in reducing the volume of smuggling. A particular concern is that counter-smuggling measures can increase the vulnerability of smuggled migrants. Counter-smuggling measures should therefore not assume that if smuggling is repressed, then its undesirable consequences will also vanish.

Introduction

Migrant smuggling is widely seen as incompatible with migration management objectives. The *New York Declaration for Refugees and Migrants*, adopted by the UN General Assembly in 2016, includes a commitment to 'vigorously combat' migrant smuggling with a view to its elimination.¹ In Europe, the *European Agenda on Migration* refers to a 'robust fight' against smugglers.²

1 United Nations General Assembly (2016).

2 European Commission (2015).

These resounding calls for action raise a question: *how* should migrant smuggling be confronted? This brief paper addresses that question.³ It does not list operational priorities—which need to be developed in a context-specific way—but it provides the analytical foundations for addressing migrant smuggling in a strategic way.⁴

Migrant smuggling can be defined in general terms as *the facilitation of a person's unauthorized border-crossing in exchange for material benefits*.⁵ The phrase migrant smuggling presumes an inclusive definition of 'migrants' that covers everyone who has left their usual place of residence, regardless of their motivation for doing so.⁶ Many of the migrants who use the services of smugglers are refugees.

The term migrant smuggling tends to evoke particular images and examples. General principles for confronting migrant smuggling should be based on a broader perspective on migrant smuggling services, beyond its headline-grabbing manifestations. For instance, people who flee armed conflict or persecution may depend on smugglers for *getting out* of harm's way in the first place, and not only for *getting in* to the countries that are perceived to offer the best protection.⁷

Motivations

Why is migrant smuggling being fought? Since the fight against smuggling is a point of agreement in an otherwise fractured policy field, it appears that we should simply focus on *how*, not *why*. Yet, the effectiveness of counter-migrant measures can only be evaluated on the basis of more specific objectives. The reason is that strategies for countering migrant smuggling are diverse and have disparate consequences and implications—often problematic ones. Clarity about the motivations for counter-smuggling measures allows for better cost-benefit analyses and fosters an informed debate about ethical and political dilemmas.

What follows is an overview of nine distinct motivations for fighting migrant smuggling. They differ in terms of their salience, explicitness, and legitimacy, but they are all important in current counter-smuggling efforts. The normative evaluation of each motivation is partly a political issue. Regardless of diverging political opinions, bringing the totality of motivations into the discussion helps making sound decisions and ensuring accountability.

1. **Reducing illegal immigration** — When smuggling facilitates the unauthorized entry of people with no intention to seek asylum, it contributes to illegal residence and illegal work.⁸ Fighting migrant smuggling thus helps ensure that immigration is subject to the rule of law. This is the classical motivation for the fight against smuggling, tied to the State's ability to assume its responsibilities.
2. **Preventing unfounded asylum claims** — In many parts of the world, smuggling has shifted from being primarily a pathway to illegal work to becoming a pathway towards legal residence via the asylum system. When asylum applications are rejected, returning applicants to their country of origin is often costly and sometimes impossible. Reducing the number of unfounded claims is therefore beneficial to states

3 I am grateful to comments from participants at 'Ideas to inform international cooperation on safe, orderly and regular migration' Migration Research Leaders Syndicate, International Organization for Migration, Geneva, 28–29 September 2017. Input from Susan Martin and Travers McLeod has been particularly valuable for the revision.

4 More detailed analyses are available in the author's work elsewhere. See also Carling *et al.* (in press) for proposed actionable commitments.

5 The precise definition used by the United Nations (2000) is 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident'. However, the reference to 'illegal entry' can be misleading because many migrants being smuggled have a well-founded fear of persecution and should, under the 1951 Refugee Convention, not be penalized for entering the country of refuge without authorization. While the UN specifies that migrant smuggling involves some form of material benefit, national legislation in some countries defines migrant smuggling more broadly, without the requirement of a profit motive. See Gallagher and David (2014) for additional analyses of the international law of migrant smuggling.

6 See Carling (2017) for a discussion of definitions of 'migrants' and their implications.

7 Crawley *et al.* (2016)

8 The majority of undocumented immigrants in many countries are overstayers, rather than illegal entrants. Consequently, smuggling may play a minor role in the overall problems of illegal residence and illegal work.

as well as to migrants who are being returned, sometimes indebted from smuggling fees. Smugglers, however, have an incentive to *create demand* for their services by producing false expectations for the possibility of being granted asylum. The fight against migrant smuggling can therefore, in some cases, help reduce the number of unfounded asylum claims.

3. **Minimizing protection obligations** — The asylum system requires physical presence on a country's territory in order to launch an application. But if the application has merit and the state has signed the 1951 Refugee Convention, then protection must be granted. Most high-income countries endorse the Refugee Convention yet wish to minimize asylum immigration. These objectives have long been combined by ensuring that potential asylum seekers are blocked from accessing the national territory, and hence the asylum system. By allowing asylum seekers to overcome this blockage, smugglers frustrate states' ability to uphold the Convention and curtail its use at the same time. When many of the smugglers' clients have a well-founded fear of persecution, anti-smuggling measures can be motivated by the wish to minimize protection obligations.
4. **Expanding regular migration** — States that seek to accommodate substantial immigration may regard this as feasible only if smuggler-facilitated migration is kept to a minimum. For instance, large intakes of quota refugees may depend (economically and politically) on small numbers of asylum seekers. Similarly, expanded provisions for low-skilled labour migration might require reassurances that there will not be a parallel undocumented immigration flow.
5. **Averting exploitation, suffering and loss of life** — Migrant smuggling has staggering human costs, including thousands of deaths and widespread traumatization. The social and economic costs to migrants can also be grave if they incur large debts to smugglers. The unacceptable human toll is often invoked as a motivation for fighting migrant smuggling.
6. **Obstructing funding streams** — Migrant smuggling can be a valuable source of income for terrorist groups and criminal organizations. The elimination of this funding stream would therefore contribute to the broader fight against terrorism and organized crime.
7. **Preventing terrorist infiltration** — There is growing concern that smuggler-facilitated migration flows may allow terrorists to cross borders in order to carry out attacks. This possibility has been raised as a reason for intensified efforts to stop the smuggling.
8. **Showing political resolve** — Migration management is fraught with conflicts of interest and tenuous relationships in need of careful management. At the same time, there is often a sense of urgency and demand for strong leadership. In this context, counter-smuggling measures provide a welcome opportunity for demonstrating assertiveness and claiming moral superiority.
9. **Securing resources or bargaining power** — Counter-smuggling efforts create opportunities for individuals, organizations, and states to pursue material or political gains.⁹ For instance, certain law enforcement and paramilitary organizations have seen substantial growth in staff and budgets, and countries of origin and transit have been able to use the counter-smuggling agenda for increased bargaining power in bilateral relations with countries of destination. From an analytical perspective, it is important to recognize such motivations. The motivations, here, lie not in the elimination of migrant smuggling, but rather in the opportunities that the counter-smuggling activity itself creates.

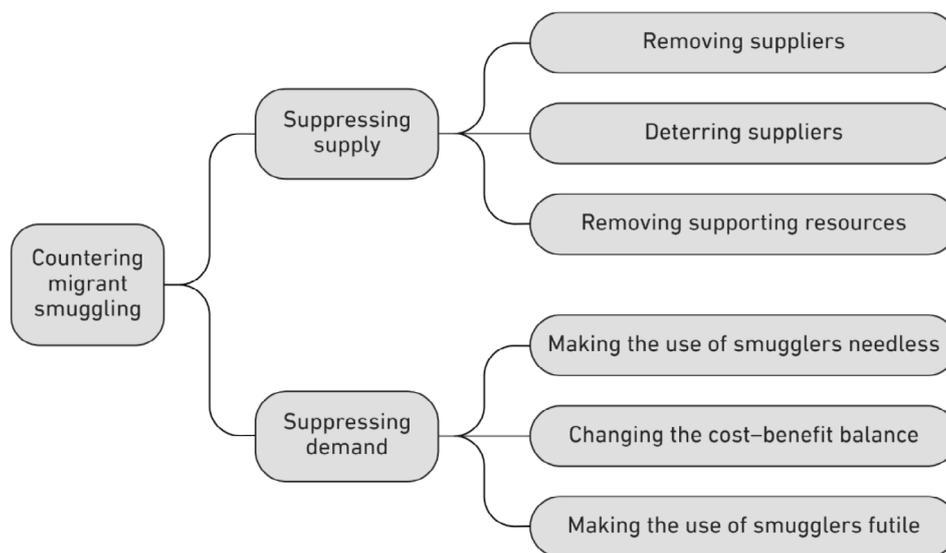
⁹ Benvenuti (2017), France 24 (2017), Lutterbeck (2013), Taub (2017).

Strategies

The process of developing the Global Compact on Migration (and the Global Compact on Refugees)¹⁰ is an opportunity to take a long-term strategic perspective on migrant smuggling. A strategic perspective implies making holistic assessments of the costs and benefits of different courses of action, including those that are difficult to implement in the near future but may provide more sustainable solutions.

Figure 1 displays an analytical taxonomy of strategies. The two main branches focus on suppressing supply and demand, respectively. This analytical distinction is well-established in criminological analyses of other fields, such as drug enforcement, trade in endangered wildlife products, and prostitution, but not in analyses of migrant smuggling. With respect to migrant smuggling, the object of supply and demand is the smuggling service.

Figure 1. A taxonomy of strategies for countering migrant smuggling



The next tier in the taxonomy are specific strategies towards the two aims of suppressing supply of, and demand for, migrant smuggling services. These strategies could be further sub-divided into concrete counter-smuggling measures. Such measures are not shown in the figure, but examples are mentioned below.

Suppression of supply can be pursued in three ways. The first strategy is to *remove suppliers* from the market, primarily through dismantling smuggling networks and arresting smugglers. Second, authorities can seek to *deter suppliers* from entering or staying in the market, typically through raising penalties or increasing the risk of being caught. Third, supply can be suppressed by *removing the supporting resources* that make smuggling possible. These resources include potential smuggling vessels, marketing resources (such as web sites and social media accounts), and corrupt officials.

As with many other forms of crime, it seems clear that as long as there is demand for migrant smuggling, it will be impossible to eliminate the supply. However, the demand side of counter-smuggling strategy has largely been addressed with scant analytical precision, resorting instead to vague notions of ‘addressing the root causes’ or ‘disrupting the smugglers’ business model’.¹¹ Affecting demand is challenging—in practical, economic, legal and ethical terms—but needs to be part of a sustainable, long-term approach.

In Figure 1, strategies for suppressing demand are split in three. First, it is possible to make the use the smuggling services *needless* by allowing potential clients to reach their objectives in other ways. In the case

¹⁰ Although migrant smuggling is placed within the process leading to the Global Compact on Migration, it is equally relevant to the Global Compact on Refugees.

¹¹ For critiques of these concepts, see Carling and Talleraas (2016) and Achilli and Sanchez (2017), respectively.

of migrants who seek protection from persecution or conflict, smuggling could be rendered needless by providing adequate protection closer to home, by carrying out large-scale relocation of recognized refugees, or by issuing humanitarian visas to asylum seekers. (Putting an end to the conflict and oppression that motivates migration is important in its own right and falls outside the scope of migration management.)

At the other extreme is the strategy of making the use of smugglers *futile*. In other words, authorities can seek to prevent potential clients from reaching the objectives that motivate the purchase of smuggling services. In cases of illegal labour migration, suppressing illegal employment in the country of destination can curtail the demand for being smuggled. Signing readmission agreements and ensuring rapid returns can have the same effect.

In the case of asylum seekers, making the use of smugglers futile is difficult without compromising responsibilities towards refugees. But that has not stopped states from pursuing this strategy. Prominent examples include the 2013 Regional Resettlement Arrangement between Australia and Papua New Guinea, which barred smuggled migrants from settlement in Australia regardless of their protection needs, and the 2016 agreement between the EU and Turkey that promised the return of all irregular migrants crossing from Turkey to Greek islands. The common element of these policies lies in the resulting futility of being smuggled.

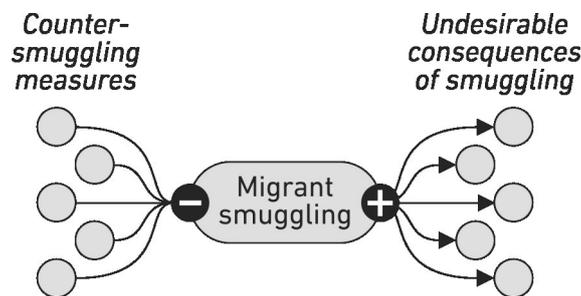
In between these two extremes of making smuggling needless or futile, it is possible to pursue a strategy of *changing the cost–benefit balance* for prospective clients of migrant smugglers. Such a strategy could involve making the (perceived) likely outcome of being smuggled less attractive, making the (perceived) cost of being smuggled higher, or making the alternatives to being smuggled more appealing. Perceptions are important, since they inform decisions, and authorities have therefore invested heavily in this sphere, too.

All six strategies and their associated measures have shortcomings and raise real dilemmas. Assessing the merits of each one requires going back to the *motivations* for countering smuggling and re-examining the connections between measures and consequences.

Measures and consequences

Dominant counter-smuggling approaches have been based on a simple logic: (1) migrant smuggling has undesirable consequences; (2) migrant smuggling must be eliminated. The implication is that if migrant smuggling is eliminated, then its undesirable consequences will also disappear. In other words, migrant smuggling sits at the heart of causal nexus between a range of possible counter-measures that can suppress migrant smuggling, and a series of undesirable consequences that will result if smuggling persists (Figure 2).

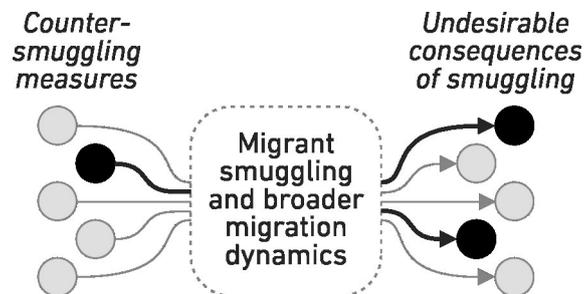
Figure 2. The conventional logic of counter-smuggling approaches



This model is misleading for several reasons. First, counter-smuggling measures do not simply *reduce* migrant smuggling, but alter the dynamics of migrant smuggling and migration more broadly. Second, specific counter-smuggling measures will have different effects on the various consequences of migrant smuggling. Third, these effects are not limited to the reduction of undesirable consequences, but could abate some consequences while aggravating others. For instance, erecting a fence along the most accessible sectors of a border might reduce the total number of unauthorized entries, but at the same time make smuggling more dangerous for migrants and more profitable for smugglers.

Consequently, the logic of counter-smuggling measures and their outcomes should be revised (Figure 3). The implications are clear: it makes a difference what motivates the fight against migrant smuggling, and which mix of counter-smuggling measures is adopted. These choices are not simply a matter of efficacy in the mission of eliminating migrant smuggling, but shape the distribution of gains and losses.

Figure 3. A revised logic of counter-smuggling measures and their outcomes



Conclusions

This brief paper leaves many questions unanswered. But it has prepared the ground for several concluding claims that are fundamental to developing better responses to migrant smuggling:

- The prospect of united and assertive action makes the fight against migrant smuggling a *seductive focal point* in a policy field that is often fraught with disagreement and incapacity. There is a resulting risk of failing to think critically and strategically about counter-smuggling measures and their role within migration management more broadly.
- The concerted call for a vigorous fight against migrant smuggling obscures a *diversity of motivations*. These motivations differ greatly in their explicitness and legitimacy. A lack of clarity and sincerity about motivations can have adverse effects for the efficacy of counter-smuggling measures and their indirect consequences.
- Migrant smuggling is a *humanitarian issue* in two ways: First, it results in large-scale suffering and loss of life. Second, the fight against migrant smuggling is increasingly motivated by states' desire to minimize their humanitarian protection obligations.
- It is widely recognized that migrants can be extremely vulnerable as a consequence of being smuggled. But the *connection between vulnerability and smuggling* is frequently misrepresented. First, the demand for smuggling is often driven by serious pre-existing vulnerabilities, which the elimination of smuggling would not resolve. Second, the vulnerabilities of being smuggled are not simply caused by the smugglers, but also result from the actions of other groups of individuals and from the overall context of smuggling.¹²
- Strategies for countering migrant smuggling have *diverse consequences*—beyond being more or less effective in reducing the volume of smuggling. A particular concern is that counter-smuggling measures can increase the vulnerability of smuggled migrants.

Recommendations

- The response to migrant smuggling should not be narrowly framed as a law enforcement issue. Such a framing increases the risk that counter-measures are ineffective, or even counterproductive, in a broader migration management context. The appropriate role of law enforcement is as a *component* in an overall strategy.

¹² See Carling *et al.* (2015).

- Policy measures should shift from a fixation on eliminating migrant smuggling itself to a concern with the undesirable *consequences* of smuggling. In this way, counter-smuggling efforts can be developed and evaluated in a sound way.
- Counter-smuggling measures should not assume that if smuggling is repressed, then its undesirable consequences will also vanish. Instead, each measure must be assessed with respect to its likely direct and indirect consequences.

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