



**Statement by Mr. François Crépeau,  
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**Migrant Smuggling**

**Menschenschmuggel – Trafic de migrants**

**Phänomen, Bekämpfung, ganzheitliche Lösungsansätze**

**Présentation du phénomène, moyens de lutte,**

**propositions globales de solution**

***“Reclaiming the mobility market from smuggling rings”***

Many migrants are now employing smugglers in order to cross borders that are otherwise closed to them. This happens all over the world. Some routes are easy and short, others are long and dangerous, but all mean a clandestine crossing of an international border without the appropriate documentation, such as identification documents and visa. This implies that these persons are irregular migrants in the country where they arrive.

**Avoiding semantic confusion between smuggling and trafficking**

**Smuggling is not always a criminal activity**

Depending on the definition used, it can be done by family members in order to save one of their own or by civil society organizations helping undocumented migrants, which can make it morally justified even if illegal. Canada does not include financial benefit in the definition and has thus criminalized the activity of a Canadian citizen of Somali origin who went to a country neighbouring Somalia with the passports of his wife and son, in order to bring back to Canada his sister-in-law and her son who were destitute and unprotected. While the sister-in-law and nephew were recognized refugee status, he was prosecuted for use of false document and for smuggling, and offered a plea bargaining with conditional prison sentence, which he accepted, thus avoiding trial and detention which enabled him to continue working and ensure

the subsistence of his now enlarged family. In the family lore, for generations to come, this man is a hero. I personally find these actions of the Canadian authorities in providing this man with a criminal record morally indefensible.

Canada also tried to prosecute an elderly American civil society volunteer who was driving undocumented refugees to the Canadian border where they could ask for asylum. In the end, although detained for a month, she was not prosecuted but the chilling effect on civil society was there.

### **Smuggling happens in many forms**

Smuggling operations can be of various categories. Often, in countries like Afghanistan, small family or clan operations control one section of the border and will help its crossing for a small fee. In other cases, big mafia rings have migrant smuggling as a small percentage of their activities, which also include drug trafficking, arms trafficking, contraband, trafficking in persons, etc.

The cost for the migrant depends on the length of the operation, its difficulty and the demand. Some pay up to 75.000\$USD for being smuggled to America. Some operations include a job upon arrival. Some smugglers accept a credit system, where the migrants are indentured with them for a time after the smuggling, in order to pay for the debt. Some smugglers offer a guarantee: they will charge nothing the second time if the migrant is arrested while en route the first time; others offer three passages for the price of two. In sum, it is a market and both sides have something to offer.

### **Smuggling is a nasty business**

The Canadian Refugee Council said twenty years ago, “smuggling is a nasty business, but it saves lives”.

Migrant smuggling is a nasty business. We see too often on the news examples of tragedies: persons who died of dehydration in a desert, others who suffocated in an abandoned container, yet others who drowned when their unseaworthy ship sunk and end up washed on a beach. Smugglers can care little for the safety and dignity of their cargo. The migrants are in a totally vulnerable situation: they are literally in the hands of the smugglers, who can dump them anywhere they like, abuse them, denounce them to the authorities, or even forcibly transfer them in a trafficking operation for prostitution or slavery purposes. One hears stories of migrants being robbed, held for ransom, raped, or thrown overboard.

### **Smuggling saves lives**

But smuggling also saves lives. All over the world, individuals are trying to build a future for themselves and their family. Migration is often the only way to do so, when unemployment and violence are endemic. Human beings have always moved from places of poverty and conflict to places of prosperity and stability: *sapiens sapiens* is a migrating animal species and it is not 300 years of territorial nationalism that will change our DNA.

In history, smuggling saved countless lives for Armenians exiting the Ottoman Empire, European Jews fleeing nazi rule, Spanish Republicans, Central Europeans and Indochinese fleeing communism, Cambodians fleeing genocide, etc. Today, when no visa is available for anywhere, and one's life or one's family future is at stake, smuggling is often the only option. And it is an option that might be supported by the entire family or clan, which will pull all its resources in order to allow the most able among them to try their luck. In turn, if successful, this migrant will send remittances home or will help another to join them.

Many (including in this room) owe their lives to the fact that their parents or grand-parents were smuggled out of repressive regimes. Arguably, those who arrived in Europe in the past two years, and have started to work and send money home and help others, have arguably made the best decision of their lives in investing in a smuggling operation, a decision which will provide a future for their children and grand-children. Their courage, grit and determination will be celebrated in the family lore. We, in the North, do not have the moral high ground here: they do.

In short, migrant smuggling is part of a resourceful survival strategy which often extends beyond the individual migrant. It is the result of a contract, albeit an “unequal contract” which leaves the migrant entirely vulnerable to frequent abuse by the smugglers.

The million refugees and migrants who arrived in Europe in 2015 almost all used the services of smugglers. Yes, up to 5000 died in the process, and probably tens of thousands of others were abused, but the smugglers can still boast a 99.5% success rate in terms of crossing the border. This is a powerful advertising tool for their services. Informing them of the dangers of smuggling has difficulty beating the message that this kind of percentage is conveying.

Let’s be clear. I’m not advocating in favour of smuggling and I think that smugglers who exploit migrants should be prosecuted and condemned. I only want it to be recognised that smuggling is the direct result of prohibition policies by states. Until last summer, smuggling within the EU had disappeared, although it had existed before the 90s. Since last summer, when France introduced some controls at the Italian border, new smuggling routes reappeared through the Alps.

### **“Fighting irregular migration” is a driver of smuggling**

Destination countries are now “fighting irregular migration”: it has been defined as part of international criminality by the Schengen Convention in 1990, alongside drug trafficking, arms trafficking and terrorism. It is heralded as an absolute evil by all political discourses, right and left. While this inclusion in international criminality appears aimed at fighting the criminals, most of the resources deployed since 1990 seem aimed at catching and sending away the migrants themselves.

In the negotiation of the Palermo Protocol, we had to wait until the 9<sup>th</sup> session of negotiation and the joint and forceful intervention of UNHCHR, IOM, UNHCR and UNICEF, for the timid human rights guarantees for migrants to be introduced in the text of the protocol. The initial objective stated in the protocol was stopping irregular migration rather than really going after smugglers.

Even though they are generally described as “victims” of the smugglers, which many become effectively, they are often mostly treated as criminals, or closely associated with criminals. Many such migrants are arrested and detained, often in appalling conditions, for weeks, months or years. Some are returned to a country of transit or to the country of origin without regard for their treatment upon arrival. Many countries, both in the Global North and in the Global South, are building walls, erecting virtual fences, flying drones, as well as paying transit countries to do the dirty job, to prevent them from crossing the line.

The EU-Turkey statement of 18 March 2015 seems to be aimed precisely at that. Either ensuring that Turkey keeps the migrants on its territory, using whatever means at its disposal (we haven’t really asked many questions about how the numbers of migrants went down so quickly after the adoption of the EU-Turkey statement). Or ensuring that migrants will be returned to Turkey as swiftly as possible, under the proclaimed idea that Turkey is a safe country for all Syrians and in the hope that this will have a deterrent effect on other migrants.

The hotspots I've visited in Samos and Lesbos have become detention centres which are actually quite dysfunctional and dangerous, especially at night, and create little incentive for migrants to come forward to the authorities. Such bad conditions have also been described as having a deterrent effect.

We have recently seen Greek judges preventing the implementation of returns under the statement by requiring that the safety of each individual identified for return to Turkey be individually established, which destroys the objective of the statement to create a swift return mechanism through requiring an individual human rights analysis, in line with the whole of the human rights doctrine.

Yet, the hoped-for deterrent effect seems to consistently fail to materialize. My explanation is that, in the face of the situation of the home country and the duty migrants often carry towards their family, hope remains a much more powerful engine of action than all the barriers one can build in its way. It is quite telling that refugees and migrants often fear as much the violence of the authorities of the countries of transit and destination than that of the smugglers.

### **Push and pull factors**

The push factors for migration are well known: poverty and violence, resulting from war, conflict, bad governance, discrimination, corruption, lack of opportunities and the inability to imagine a future for oneself or one's children.

Destination countries, North and South, should also start to recognize and address the "pull" factors for irregular migration, namely the unrecognized need for low-wage migrant labour in destination States.

Refugees will go where they have assurances of protection against a return home. But all migrants, including refugees, mostly go where there are jobs, where they can start integrate and create a future for their children, and this is mostly in dynamic cities where there are jobs for migrants.

Many of those jobs are in the official labour market. One of the factors which pushed Chancellor Merkel to move last fall was the advice of the business community that Germany needed migrant workers, as explained by a very interesting report of several German foundations, including the Volkswagen and Siemens foundations. The positive impact of the migration of the past two years in Germany, in terms of an uptick in its GDP, has already been documented.

But many of those jobs will be in underground labour markets, which have flourished in the past thirty years in many countries of destination, North and South. Indeed, globalization pushed a number of economic sectors to seek lower labour costs by delocalizing production to the south. And it pushed other economic sectors which could not be delocalized, such as agriculture, construction, care, hospitality, extraction or fisheries, to import labour conditions from the south in underground labour markets. Hundreds of thousands of employers are calling for more undocumented migrant workers. I've met migrants working in fields in the south of Italy and paid 20 euros for ten hours per day.

Now, if you have push and pull factors and you put a barrier in between, preventing this mobility, but responding neither to the need to leave nor to the need to hire, you create perfect conditions for an underground labour market to appear and flourish. And, in this underground market, it's the smugglers who respond to the demand.

### **The need to open regular migration channels**

As I've told the EU in my June 2015 report to the UN Human Rights Council, there is an urgent need to open up a much greater number of regular migration channels, to ensure that exploitative employers are sanctioned and to reduce the large underground labour markets that globalization has spurred. Such opening of regular migration channels would lead to fewer instances of irregular migration, less smuggling of migrants, less labour exploitation and less loss of life.

As long as there are insufficient regular avenues for migration, smugglers will thrive. Barriers to mobility create an underground market that mafias exploit.

Putting barriers to mobility has also the counter-productive effect of preventing undocumented and unemployed migrants from returning home, for fear that they won't be able to come back when the labour market will pick up. This is well documented in the case of Mexicans in the US.

Although we must prosecute crimes against migrants by smugglers as much as we can, "fighting the smugglers", as is often called for by politicians, is in part a red herring. As long as persons in need of mobility will not be provided with official mobility solutions, other mobility solutions will be provided by opportunistic smuggling rings.

Over-criminalizing smuggling serves little purpose. Small fry will be caught but the kingpins will rarely be arrested and prosecuted. I have met in Italy a boy of maximum fourteen years of age, being prosecuted for aggravated smuggling, because, in a smuggling operation where two persons had drowned, he was the brother of another migrant who had been charged by the smugglers to pilot the boat and he had been helping his brother. I frankly don't see the point of prosecuting this boy.

Criminalizing all aspects of irregular migration actually pushes migrants further underground and makes them even more vulnerable to exploitation by smugglers, recruiters and employers. We may disrupt this or that operation and make the life of smuggling rings more difficult, but we often only increase the cost of the migrant route, we send the migrants on more dangerous routes, and, in the end, we reinforce the power of highly organised, tech-savvy, very adaptable, multi-dimensional, ruthless mafias. We almost never eliminate smuggling. Thus, criminalizing all aspects of irregular migration actually puts migrants' rights more and more at risk. Can we really say that this is still an unintended consequence?

### **Legalizing, regulating and taxing mobility**

Only legalizing, regulating and taxing mobility will allow States to reclaim the market and eliminate most of the smuggling.

We have historical examples of this. The prohibition of alcohol in the USA between 1920 and 1933 stopped when the American authorities realized that legalizing, regulating and taxing the sale of alcohol was smarter than trying to fight Al Capone and the bootleggers from Montreal.

40 years of the present "war on drugs" have had no effect on consumption and the cartels are deadlier than ever: legalizing, regulating and taxing marijuana and opening safe injection sites seem a reasonable alternative, one that several countries are banking upon.

Moreover, until the 70s, visa-free travel was the rule rather than the exception: Mexicans entered the US easily and went back and forth across the border according to economic cycles, and millions of Africans and Turks entered Europe without difficulty to take up jobs, using ferries, with no deaths at sea, virtually no smuggling rings, and small underground labour markets.

In technical terms, we must avoid zero-tolerance policies, which only entrench underground markets and operations, and bank on harm-reduction policies through thinking of the “victims” first and foremost, as we did for alcohol and as we are starting to do for drug-users.

### **Resettlement programs and visa regimes**

For migrants, we should think in terms of facilitating access to mobility solutions and avoiding criminalization, in theory and in practice, at all costs. Many refugees and migrants would not spend 10,000 Euros and risk the lives of their children if there’s a meaningful possibility of regular, safe and cheap visas available in the near future.

For refugees, this means effective and robust resettlement policies directly from transit countries. I have suggested that 500,000 refugees per year for the whole the EU would make for manageable numbers for each country.

For other survival migrants, we need to considerably expand visa facilitation and visa liberalization. With smart visas, creating incentives to respect the conditions of the visas, we would allow people to come and look for work. And, if we seriously reduced the size of the underground labour markets through an effective repression of exploitative recruiters and employers, migrants who would come to look for a job would move on if they couldn’t find one.

Efficient visa regimes would allow for all the security checks by intelligence agencies to be made in the transit countries, with enough time to process the claims. The huge and costly security apparatus against irregular migration could be reduced and such resources better used in beefing up intelligence services, in integration programs. This would also considerably reduce the workload of refugee determination mechanisms inside destination countries.

Politicians in destination countries would also have the opportunity to show their electorate that borders are respected, that the authorities are managing migration properly, that there’s no “chaos on the beach”, that the reception mechanisms are in place and aren’t overwhelmed, and that the fear-mongering discourse of the nationalist populist politicians is based on stereotypes, myths and fantasies. And mainstream politicians would be able to develop a pro-mobility, pro-migration and pro-diversity discourse which has been singularly lacking in the past two decades.

Such policies will also require strong investment in coordinated integration policies and practices, on a scale that Europe has not had the wisdom to implement in the past decades.

### **Reclaiming the mobility market from the smugglers**

This cannot be done overnight. Present or impending labour shortages have been identified all over the planet by economists and labour mobility will be needed to respond to such shortages. And what is most lacking at present in the political debate about migration is a long-term vision and strategy.

Politicians need to propose how they want to expand human mobility in the next 25 to 50 years. How can we collectively ensure that most people are allowed to come and go as they think fit to find work and respond to labour needs within a lifetime?

Smuggling would disappear if we decided to find solutions to both the need for emigration from the Global South and the need of the Global North for competitively priced labour. Migrant smuggling and irregular migration generally are our own making: with imagination and appropriate resources, it is in our hands to make them disappear.

The EU has been very good at proposing long-term strategies: “Europe of 92” and Schengen with the free movement of persons, or the Euro are good examples. We need the same type of

long-term vision for mobility. For example: can we double the number of people benefiting from visa facilitation and visa liberalization within 10 years? Can we offer visa facilitation to all of Africa within a quarter century?

Smuggling is a symptom. We need to treat the condition.

I thank you for your attention.

*François Crépeau*