

## **TRAFFICKING IN PERSONS, MIGRANT SMUGGLING & TRANSNATIONAL CRIMINAL ORGANIZATIONS**

This document contains United Nations and United States definitions of Trafficking in Persons (TIP), Migrant Smuggling, and Transnational Criminal Organizations (TCO). The UN definitions come from the 2000 United Nations Convention against Transnational Organized Crime (UNTOC). UNTOC and its protocols are commonly referred to as Palermo Convention or Palermo Protocol. US definitions come from different documents. The American TIP definitions provided here are from the Trafficking and Violence Protection Act of 2000 and the State Department 2013 Trafficking in Persons Report. The US TCO definition comes from the 2008 Law Enforcement Strategy to Combat International Organized Crime. This document was drafted by the Justice Department and adopted by all U.S. government departments and agencies.<sup>1</sup>

### **DEFINITIONS OF TRAFFICKING IN PERSONS**

#### **UNTOC TIP PROTOCOL**

##### **ARTICLE 3**

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

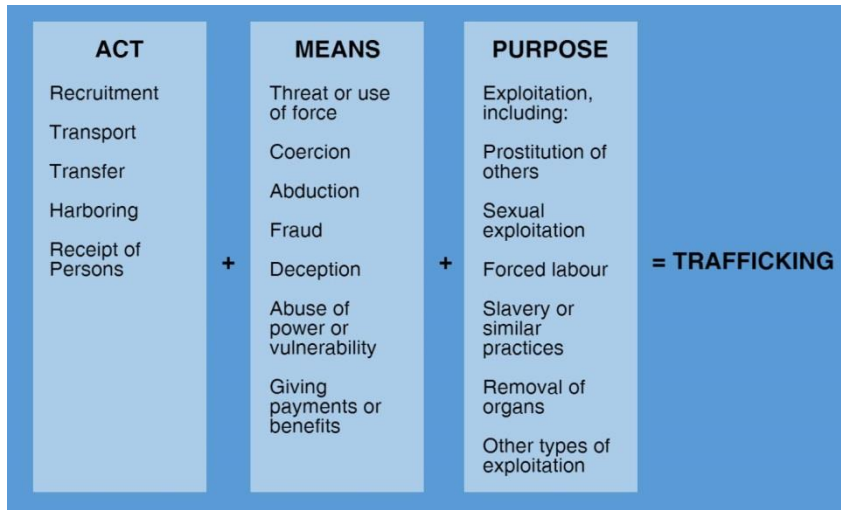
(c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

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<sup>1</sup> <https://www.justice.gov/sites/default/files/usao/legacy/2012/10/31/usab6006.pdf>

(d) "Child" shall mean any person under eighteen years of age.

**Elements of Human Trafficking:**<sup>2</sup>



**UNITED STATES VICTIMS OF TRAFFICKING AND VIOLENCE PROTECTION ACT OF 2000 (TVPA)**

**PUB. L. 106-386**

(8) SEVERE FORMS OF TRAFFICKING IN PERSONS.—The term “severe forms of trafficking in persons” means— (a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(9) SEX TRAFFICKING.—The term “sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

**U.S. DEPARTMENT OF STATE**

**2013 TRAFFICKING IN PERSONS REPORT**

“‘Trafficking in persons’ and ‘human trafficking’ have been used as umbrella terms for the act of recruiting, harboring, transporting, providing, or obtaining a person for compelled labor or commercial sex acts through the use of force, fraud, or coercion. The Trafficking Victims Protection Act (TVPA) of 2000 (Pub. L. 106-386), as amended, and the Palermo Protocol describe this compelled service using a

<sup>2</sup> Graph extracted and recreated from the United Nations Office on Drugs and Crime’s webpage on Human Trafficking: <https://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html>

number of different terms, including involuntary servitude, slavery or practices similar to slavery, debt bondage, and forced labor.

Human trafficking can include but does not require movement. People may be considered trafficking victims regardless of whether they were born into a state of servitude, were transported to the exploitative situation, previously consented to work for a trafficker, or participated in a crime as a direct result of being trafficked. At the heart of this phenomenon is the traffickers' goal of exploiting and enslaving their victims and the myriad coercive and deceptive practices they use to do so."<sup>3</sup>

## DEFINITION OF MIGRANT SMUGGLING

### UNTOC SMUGGLING PROTOCOL ARTICLE 3

(a) "Smuggling of migrants" shall mean 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;

(b) "Illegal entry" shall mean crossing borders without complying with the necessary requirements for legal entry into the receiving State;

(c) "Fraudulent travel or identity document" shall mean any travel or identity document:

- i. That has been falsely made or altered in some material way by anyone other than a person or agency lawfully authorized to make or issue the travel or identity document on behalf of a State; or
- ii. That has been improperly issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- iii. (iii) That is being used by a person other than the rightful holder;

(d) "Vessel" shall mean any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by a Government and used, for the time being, only on government non-commercial service.

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<sup>3</sup> Extracted from the Definitions and Methodology section of the State Department's 2013 Trafficking in Persons Report: <https://www.state.gov/j/tip/rls/tiprpt/2013/210543.htm>

## Distinctions between Human Smuggling and Human Trafficking:<sup>4</sup>

TRAFFICKING	SMUGGLING
Must Contain an Element of <b>Force, Fraud, or Coercion</b> (actual, perceived or implied), unless under 18 years of age involved in commercial sex acts.	The person being smuggled is generally <b>cooperating</b> .
<b>Forced Labor</b> and/or <b>Exploitation</b> .	There is no actual or implied coercion.
Persons trafficked are <b>victims</b> .	Persons smuggled are <b>complicit</b> in the smuggling crime; they are not necessarily victims of the crime of smuggling (though they may become victims depending on the circumstances in which they were smuggled)
<b>Enslaved</b> , subjected to <b>limited movement or isolation</b> , or had <b>documents confiscated</b> .	Persons are free to leave, change jobs, etc.
Need not involve the actual movement of the victim.	Facilitates the <b>illegal entry</b> of person(s) from one country into another.
No requirement to cross an international border.	Smuggling always crosses an <b>international border</b> .
Person must be involved in labor/services or commercial sex acts, i.e., must be " <b>working</b> ".	Person must only be in country or attempting entry illegally.

## DEFINITIONS OF TRANSNATIONAL CRIMINAL ORGANIZATIONS

### UNITED NATIONS OFFICE ON DRUGS AND CRIME WEBPAGE

"The UNTOC does not contain a precise definition of 'transnational organized crime'. Nor does it list the kinds of crimes that might constitute it.

This lack of definition was intended to allow for a broader applicability of the Organized Crime Convention to new types of crime that emerge constantly as global, regional and local conditions change over time.

The Convention does contain a definition of 'organized criminal group'. In Article 2(a):

- a group of three or more persons that was not randomly formed;

<sup>4</sup> Table extracted and recreated from the U.S. Department of State's 2006 Fact Sheet on the Distinctions between Human Smuggling and Human Trafficking: <https://www.state.gov/m/ds/hstcenter/90434.htm>

- existing for a period of time;
- acting in concert with the aim of committing at least one crime punishable by at least four years' incarceration;
- in order to obtain, directly or indirectly, a financial or other material benefit.

Since most 'groups' of any sort contain three or more people working in concert and most exist for a period of time, the true defining characteristics of organized crime groups under the Convention are their profit-driven nature and the seriousness of the offences they commit.

The UNTOC covers only crimes that are 'transnational', a term cast broadly. The term covers not only offences committed in more than one State, but also those that take place in one State but are planned or controlled in another. Also included are crimes in one State committed by groups that operate in more than one State, and crimes committed in one State that has substantial effects in another State.

The implied definition 'transnational organized crime' then encompasses virtually all profit-motivated serious criminal activities with international implications. This broad definition takes account of the global complexity of the issue and allows cooperation on the widest possible range of common concerns.”<sup>5</sup>

**U.S. DEPARTMENT OF JUSTICE, LAW ENFORCEMENT STRATEGY TO  
COMBAT INTERNATIONAL ORGANIZED CRIME (2008)**

“[I]nternational organized crime” [used interchangeably with “transnational organized crime”] refers to those self-perpetuating associations of individuals who operate internationally for the purpose of obtaining power, influence, monetary and/or commercial gains, wholly or in part by illegal means, while protecting their activities through a pattern of corruption and/or violence or through an international organizational structure and the exploitation of international commerce or communication mechanisms. There is no single structure under which international organized criminals operate; they vary from hierarchies to clans, networks and cells, and may evolve to other structures. The crimes they commit also vary. International organized criminals act conspiratorially in their criminal activities and possess certain characteristics which may include, but are not limited to:

- In at least part of their activities, they commit violence or other acts that are likely to intimidate, or make actual or implicit threats to do so;

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<sup>5</sup> Extracted from the United Nations Office on Drugs and Crime’s webpage on Organized Crime: <https://www.unodc.org/unodc/ar/organized-crime/index.html>

- They exploit differences between countries to further their objectives, enriching their organization, expanding its power, and/or avoiding detection and apprehension;
- They attempt to gain influence in government, politics, and commerce through corrupt as well as legitimate means;
- They have economic gain as their primary goal, not only from patently illegal activities but also from investment in legitimate business; and
- They attempt to insulate both their leadership and membership from detection, sanction, and/or prosecution through their organizational structure.