



Track: Undesirable effects

Dialogue: Policy responses to irregular migration and human smuggling

Title: Identifying & Overcoming gaps in Policy & Law Enforcement responses in order to improve regional collaboration in combating Irregular Migration & Human Smuggling. The Role of the Bali Ministerial Conference on People Smuggling, Trafficking in Persons, and Related Transnational Crime.

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Operational cooperation among law enforcement agencies nationally, sub-regionally and regionally are at the heart of any solution to the problem of transnational crime that is perpetrated through the irregular people movements. The profile of migration on the global agenda has steadily risen over the past several years and rightly so. Issues of people smuggling, trafficking in persons and terrorism are all facilitated by the irregular movement of people across international borders, whether it be through illegal border crossings of porous or inadequately monitored borders, or through established border checkpoints using means or intents that are inconsistent with the legalities of their entry such as false documentation & use of inappropriate visas. As a career law enforcement officer, it is clear that the organization and sophistication of organized transnational criminal networks often far outpaces that of those authorities challenged with eliminating such enterprise- particularly when national capacities and circumstances are so uneven and diverse. Transnational criminal elements in turn, easily develop modus operandi that exploit weaknesses in legislation and law enforcement regimes thus employing the least amount of risk to their operation.

The UN Convention against Trans-National Organized Crime and its protocols provides a solid foundation for advancing international cooperation on the issue of transnational crime. However, the real challenge lies not in nationalizing policy or legislation that is consistent with the principles outlined in the convention and its protocols, but in the enforcement of these policies & putting the commitments into practice. This presents a major challenge to governments that are tackling a range of competing economic and developmental priorities with limited resources that leave enforcement agencies lacking in capacity.



Against this reality, the challenge of the Bali Process has been to find means to strengthen regional cooperation among its 40 member countries that will lead to enhanced law enforcement efforts that are supported by improved policy and legislation and operational practice.

The strength of the Bali Process lies in its Ministerial level backing. Such high level endorsement of the process and its objectives greatly facilitates efforts to undertake initiatives that will both attract senior operational level participation and lead to practical outcomes. The terms of reference for such work were laid out by the ministers in the following recommendations;

1. Developing more effective information & intelligence sharing arrangements within the region to obtain a more complete picture of smuggling and trafficking activities and other forms of illegal migration.
2. Improving the cooperation of law enforcement agencies to enhance deterrence and to fight against illegal immigration networks.
3. Enhancing cooperation on border and visa systems to improve the detection and prevention of illegal movement.
4. Increasing public awareness of the facts of smuggling and trafficking operations to discourage those considering illegal movement and to warn those susceptible to trafficking, including women and children.
5. Enhancing the effectiveness of return as a strategy to deter illegal migration through the conclusion of appropriate arrangements.
6. Cooperation in verifying the identity and nationality of illegal migrants, in a timely manner.

Using the Ministerial level commitment demonstrated at the two Regional Ministerial Conferences as a foundation, my objective as coordinator of policy and law enforcement issues within the Bali Process has been to identify and engage in "practical" measures that will achieve outcomes that address these issues, specifically in the area of information sharing, regional and international cooperation, policy and legislative development and law enforcement.

The primary aim is to "raise the common denominator" across the region so that gaps and weaknesses in legislation and law enforcement, which are currently being exploited by traffickers and smugglers, are progressively addressed and reduced.

Our approach thus far has been to achieve consensus on the way forward and then seek to address capacity gaps through the identifying of legislative and law enforcement "standards", based on best practices, that can be incorporated to improve national and regional responses to transnational crime of trafficking and smuggling. These, in turn, provide operational benchmarks by which to gauge progress both nationally and across as a whole.

These standards include:

For People Smuggling:

- * legislation to cover legal entry into a country
- * make people smuggling a crime
- * laws and penalties to reflect serious nature of People Smuggling



* laws to make prosecutions for People Smuggling easier

For Human Trafficking:

* Make human trafficking a crime

* Laws need to be comprehensive, and include

- trafficking in men, women, and children
- "recruiting" persons to be trafficked (including using fraud, threats, force or abuse of power)
- exploiting persons who have been trafficked.
- harboring persons who have been trafficked.
- arranging, organizing, facilitating, financing, or profiting from any of the above trafficking activities.
- Laws should target main organizers of trafficking.
- Legislation or other measures should cover actions outside the state (extraterritorial application)
- Laws and penalties need to reflect the serious nature of Traffic in Persons
- Laws should aim to make prosecutions of Traffic in Persons easier
- Protection of and assistance to persons who have been trafficked needs to be considered.

For investigation & cooperation the standards were:

* Laws to allow extradition should be available

* Laws to allow information sharing between law enforcement agencies both domestically and internationally.

* Laws to allow mutual legal assistance.

* Laws for confiscation of the profits & goods.

* Criminalize the production, provision, possession, trading or use of false documents for the purpose of facilitating trafficking in persons or people smuggling, even if the documents are to be used in another state.

* Give adequate powers to law enforcement agencies to investigate people smuggling and trafficking in persons.

* Laws should aim to make prosecution for People Smuggling and Traffic in Persons more effective

* Laws to combat corruption and bribery of public officials.

* Laws to make obstruction of justice a crime in the investigation and prosecution of Traffic in Persons or People Smuggling.

* Provide legislative basis for the reliable identification of persons crossing national borders, including biometrics and developing cooperation with commercial carriers.

To advance implementation of these standards, two legislative workshops were organized wherein participants were broken into topic oriented working groups to address specific issues and challenges that could further the progress made to date on legislative strengthening. Such issues included considering implementing the Transnational Organized Crime Convention, model laws, and other related legislation such as considering processes for improving or developing stronger bilateral links with countries in the region, particularly considering extradition, mutual legal



assistance and tracing the proceeds of crime and discussing the need for protection of victims in the legislation.

The discussions were organized in such a way that countries could discuss and exchange experiences from their respective position of legislative development with a view of sharing lessons learned that would help states in addressing drafting or implementation challenges that they were facing. For example, New Zealand, led discussions relating to its national efforts to ratify the Transnational Organized Crime Convention and how it addressed necessary changes in national legislation or policy in order to adhere to principles outlined in the convention. This thus in turn benefited countries taking legislative and policy adjustments towards eventual ratification.

Through such initiatives, we have worked to progressively target our efforts so that they will contribute to tangible results. To date, results cited by participating countries include:

1. 17 countries now have criminalization legislation in place for People Smuggling and or Traffic in Persons legislation.
2. 9 countries are currently considering implementation of criminalization legislation or are in the drafting stage.
3. 8 of those countries with legislation have also adopted key protection measures for victims of trafficking.
4. 17 countries have made use of the model legislation adapted.
5. 11 countries have mutual legal assistance arrangements and or extradition legislation covering People Smuggling, Traffic in Persons, and Transnational Crime.
6. 10 countries have established national action plans, prevention strategies or inter-agency cooperation mechanisms.

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In the area of Law Enforcement, Expert's Group II similarly has worked to progressively focus its efforts to those that will assist states apply operational "standards" in the following areas that can be adapted into national law enforcement efforts.

The standards were in the field of;

1. Operational Cooperation & Investigation.
2. Identity Verification & Document Examination.
3. Technical & Capacity Requirements for Effective Enforcement.



4. Establishing combined law enforcement agency groups or teams.

In the past two and a half years, we have held targeted workshops to address the issues mentioned with particular focus in the areas of identity and document fraud and how to better manage identity issues both nationally and regionally; and strengthening of regional cooperation through the building of operational networks for information exchange and operational collaboration, including the “targeting” of known smugglers and traffickers and their modus operandi in order to improve regional cooperation in apprehending suspects.

Emphasis is placed on fostering operational relationships between and among counterparts to better facilitate law enforcement cooperation between states as a whole. This is achieved through working group exercises on operational issues, presentations by expert trainers & facilitators and cross-regional exchanges of experiences and lessons learned. As a result, there has been strengthened bilateral & multi-lateral cooperation within the region through networking vehicle that the Bali Process has provided.

As participants to such workshops normally include representatives from police, immigrations, foreign affairs, and attorney-generals, numerous governments have also cited as an additional result an improvement in national level coordination & understanding between government agencies. This has been demonstrated by several participant countries convening interdepartmental task forces on the Bali Process follow-up as well as national level seminars.

