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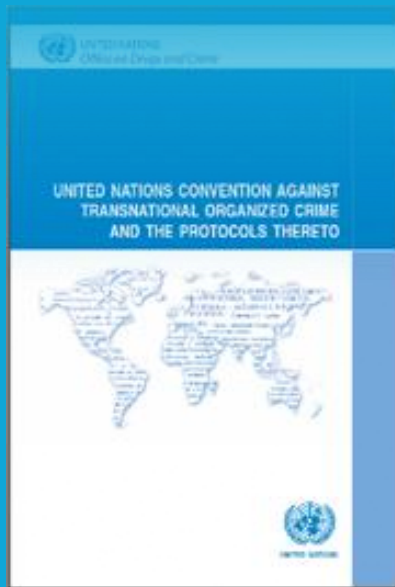
**A Framework to Combat Human Trafficking in
Persons in SE Asia**

**ARF Workshop on Trafficking in Persons
4 April 2017**

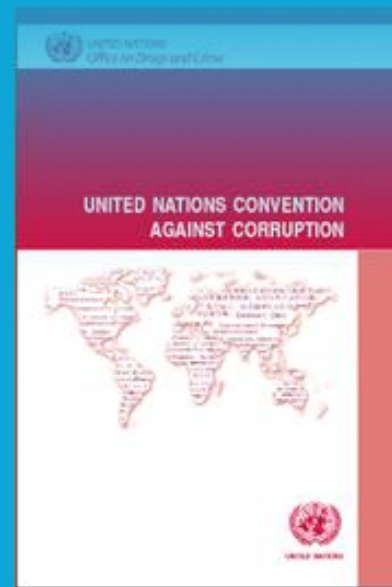


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Transnational
Organized Crime



Corruption



Adoption of the Instruments

- **United Nations Convention against Transnational Organized Crime**
 - **Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children**
 - **Protocol against the Smuggling of Migrants by Land, Sea and Air**
 - **Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition**
- **All 4 instruments open for signature until 12 December 2002 (afterward by accession)**
 - * **General Assembly Resolutions 55/25, 15 November 2000 and 55/255, 31 May 2001**



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The United Nations Convention against Transnational Organized Crime and its Protocols

- **United Nations Convention against Transnational Organized Crime**
Global Status: entered into force 29 September 2003
Parties 189
Signatories 147
ASEAN: Universal ratification
- **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (entered into force 25 December 2003)**
ASEAN Status: Ratification: 9
- **Protocol against the Smuggling of Migrants by Land, Sea and Air**
Status: entered into force 28 January 2004
ASEAN Status: Ratification: 4
Signatories: 2



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Trafficking in Persons and Smuggling of Migrants – the Definitions





Trafficking in Persons (TIP) Protocol

- The protocol provides concise **definition of trafficking in persons** and the constituent elements of the crime (Article 3)

“Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of Persons by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of the 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.....”



TIP Protocol – Elements of Human Trafficking

- The definition involves three basic elements:
 - **ACTION** of *trafficking*,
 - **MEANS** of *trafficking and*
 - **PURPOSE** of *trafficking*



TIP Protocol – Elements of Human Trafficking

- The **ACTION** of trafficking
 - Recruitment
 - Transportation
 - Harboring
 - Receipt of persons



TIP Protocol – Elements of Human Trafficking

- The **MEANS** of trafficking
 - The threat of or use of force
 - Deception
 - Coercion
 - Abuse of power or position of vulnerability



TIP Protocol – Elements of Human Trafficking

- The **PURPOSE** of trafficking

“...Exploitation shall include in the minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”



TIP Protocol – Elements of Human Trafficking

ACTION

Recruitment

Transport

Transfer

Harbouring

Receipt of

persons

MEANS

Threat

Use of Force

Coercion

Abduction

Fraud

Abuse of power
or vulnerability

Giving payments
or benefits

PURPOSE

Exploitation:

Sexual exploitation

Forced Labour

Slavery or similar acts

Removal of organs

Other forms of
exploitation



TIP Protocol – Elements of Human Trafficking

- Consent of Victim – Article 3(b)
 - Consent of victim becomes irrelevant whenever any of the ‘means’ of trafficking is used
 - A child (person below 18 years old) cannot consent even if the “means” elements are not utilised



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SOM Protocol – Elements of Smuggling of Migrants

“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.



SOM Protocol – Elements of Smuggling of Migrants

SMUGGLING OF MIGRANTS

**Procurement
of illegal entry**

**For financial or
other material gain**

**Across a border
into another state**



Differences between trafficking in persons and smuggling of migrants 1/2

Consent

- The smuggling of migrants, while often undertaken in dangerous or degrading conditions, involves migrants who have consented to the smuggling. Trafficking victims, on the other hand, have either never consented or, if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers

Exploitation

- Smuggling ends with the arrival of the migrants at their destination, whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers.

Transnationality

- Smuggling is always transnational, whereas trafficking need not be. Trafficking can occur regardless of whether victims are taken to another country or only moved from one place to another within the same country.



Differences between trafficking in persons and smuggling of migrants 2/2

Victims

- The Trafficking in Persons Protocol creates a category of victims. Victims of trafficking in persons. Smuggled migrants are not victims but object of the smuggling of migrants. Smuggled migrants may however be victims of other crimes in the process of being smuggled.

Source of profit

- The direct purpose of Smuggling of migrants is the material or financial gain. The direct purpose of trafficking in persons is exploitation. Exploitation, in turn, mostly generates financial or material gain for the traffickers.

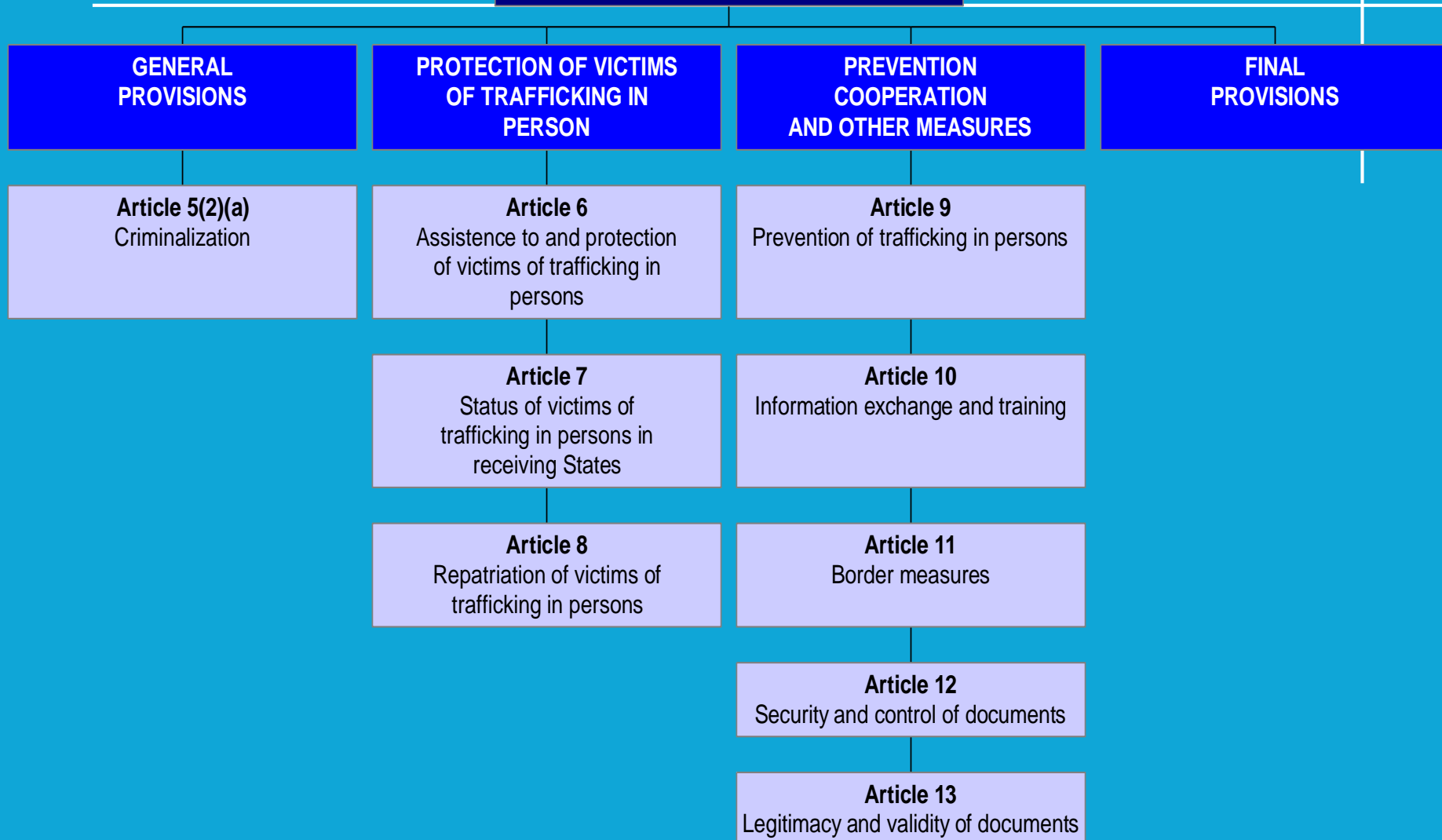


Purposes of the Trafficking Protocol (Art. 2)

- to prevent and combat trafficking, ***paying particular attention to women and children*** (=person under 18 years of age)
- to protect and assist victims, with full respect to human rights
- to promote cooperation among State Parties



STRUCTURE OF THE PROTOCOL





Key obligations for State Parties*

- **Criminalization**
(TOCC Art. 5; TIPP Art. 5; SOMP Art. 6)
- **Victims protection**
(TOCC Art. 25; TIPP Art. 6; SOMP Art. 16)
- **Investigation**
- **Prosecution**
- **Adjudication**

* Notwithstanding the fact that these countries are countries of origin, transit or destination



Assistance to and protection of victims (Art. 6)

- Assistance and protection of victims and witnesses (Art. 24-25 TOCC)
- Additional protection and support measures:
 - protection of privacy and identity where possible
 - information about proceedings and assistance in presenting views and concerns
 - endeavour to provide for safety of victims
 - programmes to protect victims from re-victimization



Assistance to and protection of victims/2 (Art. 6)

- Measures to support physical, psychological and social recovery, ***taking into account the special needs of children***
 - legal and other counselling
 - medical, psychological, material and housing assistance
 - possibility of obtaining compensation



Specific needs of children

- Children and women are given special attention as they are especially vulnerable to trafficking
- Countries shall strengthen measures to ease the factors that make especially women and children vulnerable to trafficking such as poverty, unemployment and lack of equal opportunity (Art. 9.4)
- States should discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking (Art. 9.5)



Repatriation of victims (Art. 8)

- **States Parties shall:**
 - Verify whether a trafficking victim is a national or permanent resident
 - Facilitate and accept the return of their nationals and permanent residents without undue or unreasonable delay
- **Repatriation is subject to safeguards:**
 - Due regard to safety of the victim and status of legal proceedings
 - Legal rights of victims in receiving State are preserved
 - Rights of victim as a refugee is not affected
 - Return should not be discriminatory



Prevention (Art. 9)

- **Direct and indirect prevention measures:**
 - **Protect victims, especially women and children, from re-victimization**
 - **Alleviation of social and economic factors that make victims, particularly women and children, vulnerable to trafficking**
 - **Measures to discourage demand for exploitation, particularly women and children, which leads to trafficking**



Information and training (Art. 10)

- Sharing of information about transnational organized crime (TOCC in Art. 27 and 28)
- Information exchange on:
 - whether individuals crossing borders may be victims or traffickers
 - means, methods, and types of documents used by traffickers
- States Parties are also required to provide or strengthen training in:
 - preventing, investigating and prosecuting trafficking offences
 - protecting victims and their rights
- **Training to take into account child-sensitive issues**



Border and other measures (Art. 11-13)

The Protocol calls upon States Parties to strengthen border and security measures:

- obligations on commercial carriers to check passenger travel documents
- ensure travel documents are difficult to misuse, falsify, alter or replace
- safeguard issuance of genuine travel documents
- verify travel documents as genuine on request



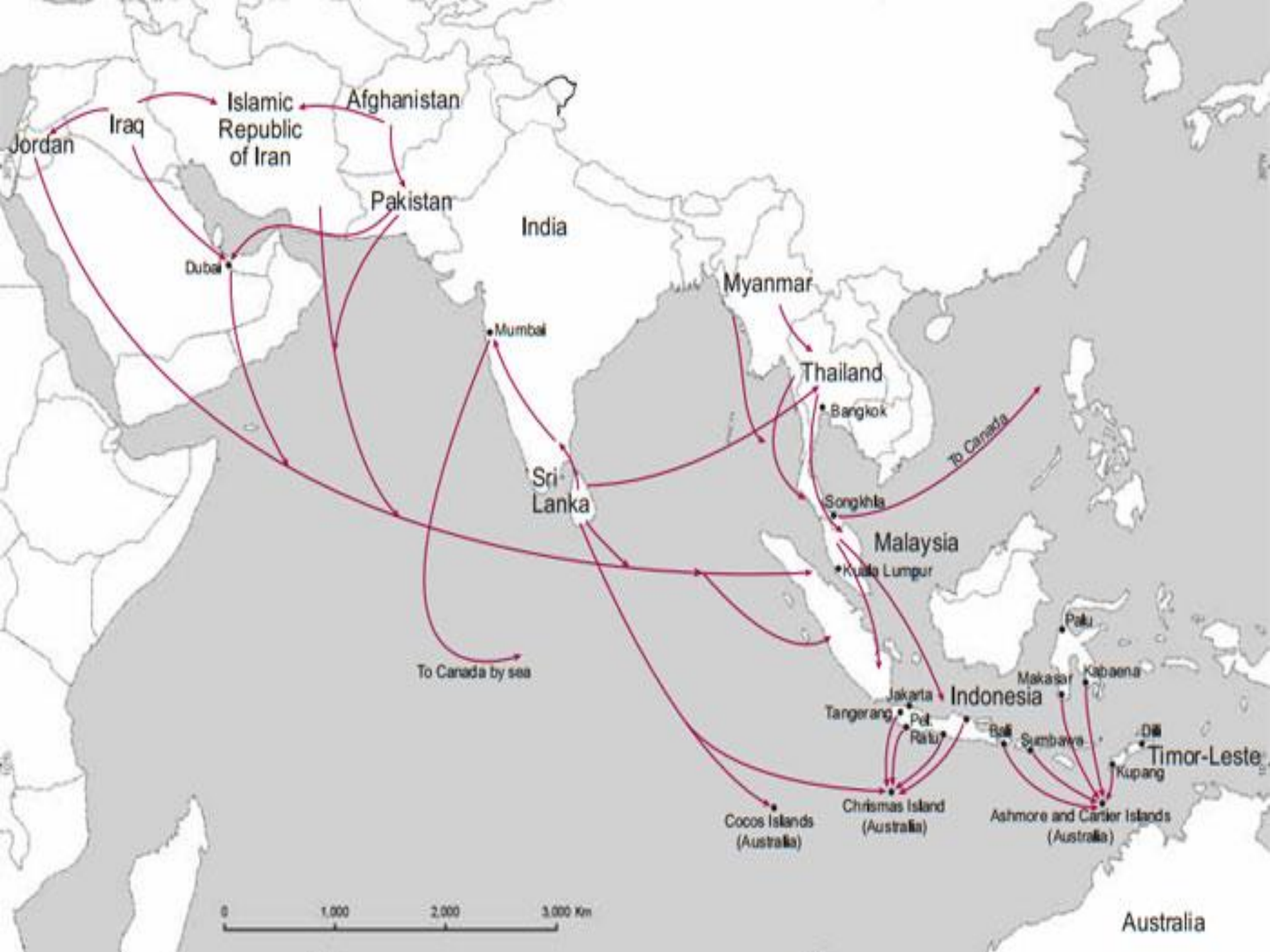
Technical assistance to Member States (TOCC Art. 30)

- ▶ Focus on developing countries
- ▶ Financial and material assistance
- ▶ Special Fund
- ▶ Multi-disciplinary/ multi-agency approach
(IOM, ILO, UNICEF, OHCHR, DAW, DPKO, OSCE etc.)
- ▶ UNODC's Global Programme against Trafficking in Human Beings



Other instruments

- ILO Convention No. 182 concerning the Prohibition and immediate Action for the Elimination of the Worst Forms of Child Labour
- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, supplementing the Convention on the Rights of the Child
- The Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption
- Recommended Principles and Guidelines on Human Rights and Human Trafficking (ECOSOC doc. E/2002/68/Add1)
 - **Guideline 7** (prevention): education/girl child
 - **Guideline 8** (special measures of protection and support of child victims): identification, non-criminalization, risk assessment, family reunion, safe return or stay (best interest), protection, special age-appropriate care, privacy, training ...
- UNHCR Guidelines on Unaccompanied Children Seeking Asylum
- UNICEF Guidelines for Protection of the Rights of Children Victims of Trafficking



Afghanistan
Islamic Republic of Iran
Pakistan
India

Jordan
Iraq
Dubai

Mumbai

Sri Lanka

Myanmar

Thailand

Bangkok

Songkhla

Malaysia

Kuala Lumpur

To Canada

To Canada by sea

Jakarta

Indonesia

Tangerang

Palu

Ratu

Bali

Sumbawa

Makassar

Kabaena

Timor-Leste

Dili

Kupang

Cocos Islands (Australia)

Christmas Island (Australia)

Ashmore and Cartier Islands (Australia)

Australia

Port Intelligence Units



The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

Additional Port Intelligence Units



Port Intelligence Units: Personnel

–PIU Officers trained in:

- Advanced Analyst Course
- Use of CMIS Software
- Information Collection and Intelligence Development
- Operational Intelligence Analysis
- Strategic Intelligence Analysis

Practical Measure of PIUs

- National coordination and policy committees
- Cooperation between national front-line maritime border agencies and criminal justice authorities
- Cooperation between frontline maritime border agencies across borders
- Rapid sharing of intelligence leading to seizures and arrests
- Sharing of information on modus operandi, trends and maritime smuggling and trafficking routes
- Joint operations against transnational crime networks operating across seas in Southeast Asia



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<http://www.unodc.org/unodc/en/human-trafficking/index.html?ref=menuside>