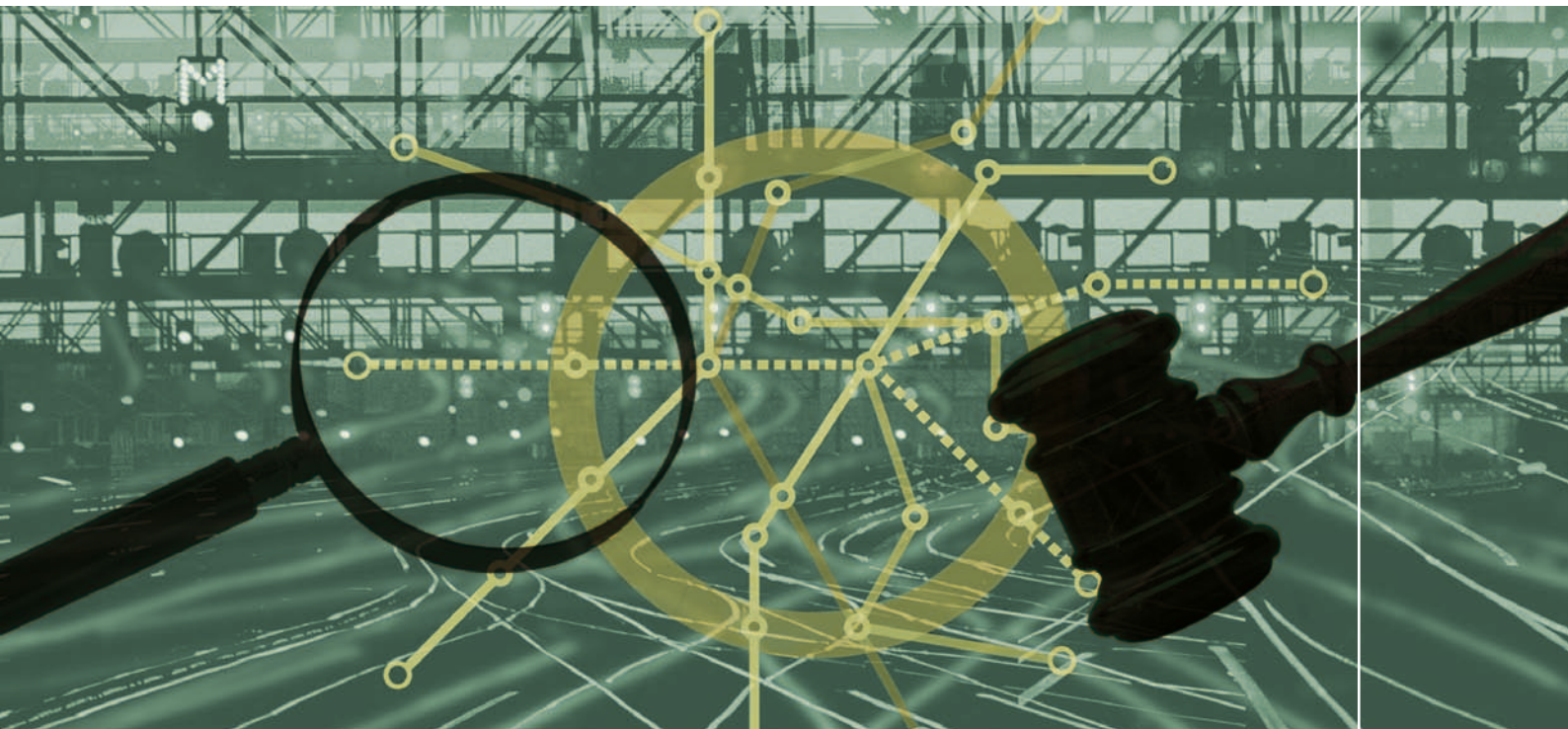




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Basic training manual on investigating and prosecuting the smuggling of migrants

Module 3
Investigative approaches

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3



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Basic training manual on investigating and prosecuting the smuggling of migrants

Module 3:

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Module 3. Investigative approaches

A. Learning objectives

The present module will look at standard investigative approaches. It will also look at the potential for non-judicial outcomes and the factors that may aggravate or mitigate offences. At the end of this module, you should be able to:

- Understand the proactive and reactive types of investigation and how they may start.
- Have an awareness of the aggravating and mitigating circumstances in investigations into the smuggling of migrants.
- Understand some of the key considerations necessary before arrests are made or searches carried out.
- Understand the potential for disruption of networks that smuggle migrants and the techniques available to support this.

B. Types of investigation

Principal considerations when investigating the smuggling of migrants

There are some general considerations that investigators must bear in mind, irrespective of the type of investigation being conducted.

- Risk:
Operational risks are addressed in annex II but it must be stressed here that human beings and very real risks to life are being dealt with. This includes a potential risk to law enforcers; for instance, sub-standard transport conditions may pose a health threat to officers who board boats when they are not specially equipped (see the example below under “reactive investigations”).
- Investigations involving offences against persons:
An investigation into the smuggling of migrants is comparable, in basic terms, with any other criminal investigation, but the nature of the human “commodity” being smuggled entails particular considerations. Because people are involved, time is of the essence. Planning is required so that special measures can be taken to ensure that human beings have their needs provided for. Cases where people are victims of crime by virtue of having been smuggled should be approached in the same way as all other offences against persons.

- Financial:

Financial investigations will be addressed in module 4. Because financial transactions are a key element of the offence, all investigations should always include some focus on the finances of the criminals involved.

- Offences:


Smuggling of migrants seldom stands alone as an offence. There is every likelihood that other crimes have been committed in conjunction with or in the course of committing the crime of smuggling of migrants. Some of these offences may be additional or incidental and may be pursued if smuggling of migrants cannot be proved. Module 7 contains a list of other offences that may have been committed.

Before starting any investigation, you should consult a senior officer or prosecutor (as appropriate).


Defining proactive and reactive investigations

In basic terms there are only two types of investigation: reactive and proactive.¹

Proactive investigations are those started by the investigators on their own initiative, often on the basis of information and intelligence gathered. Proactive investigations often utilize specialist techniques (involving, for example, informants and various forms of surveillance) to amass a body of evidence before proceeding to action such as arrests of suspects and victim rescue.

	Example: proactive investigation
<p>Over a period of several months, a sharp increase in the numbers of irregular migrants from a province in Anyland has been reported in Anotherland. It is assumed that the irregular migrants were smuggled. An investigation is therefore launched.</p>	

Reactive investigations commence as a law enforcement response to a particular incident (information is received that an offence has been committed) and include situations where an immediate response is required.

	Example: reactive investigation
<p>A boat is observed dropping some people off on a beach and the vessel is stopped by the coastguard.</p>	

¹Note: the terms “reactive investigation” and “proactive investigation” do not refer to administrative procedures. They describe two different methodological approaches to investigating a case. In civil law systems influenced by the French legal tradition, a proactive investigation usually takes place within the preliminary investigation (*enquête préliminaire*), whereas a reactive investigation is usually carried out in response to an offence where the perpetrator is caught red handed (*flagrant délit*) and within a prescribed time limit.

A proactive operation can also develop out of a reactive investigation or response, as outlined in the box below.

1. Information is received that a boat is in trouble on the ocean. A reactive response is to send the coastguard.
2. The coastguard effects a rescue of those on board, who are smuggled migrants.
3. The reactive investigation then begins, but it could also lead to a proactive investigation, particularly if the evidence found in the course of the reactive investigation is insufficient to charge someone.

In many jurisdictions, the distinction between a reactive and a proactive investigation may be blurred or non-existent.

Some jurisdictions have a strict set of criteria regarding when an investigation should start. That investigation will include both reactive and proactive elements, as described in these modules.



Questions and exercises

- In your own words, explain the difference between proactive and reactive investigations.
- Can you add any other considerations to the list comprising some of the general considerations that investigators must address, irrespective of the type of investigation being conducted, before embarking on an investigation?
- Can you think of any other general considerations, particularly with regard to your own locality or jurisdiction?

C. Reactive investigations

Reactive investigations are triggered by an event that requires an immediate law enforcement response. For example, customs officers may open the boot of a car and find two people hiding in it. The migrants and the driver of the car are arrested. The need to protect lives may allow less time and opportunity to amass as much evidence as may be possible in a proactive investigation. Frequently, there may be suspects but no evidence. However, investigators should always bear in mind that a reactive response can be a starting point for a proactive investigation.

One of the most common types of reactive investigation is triggered by the discovery of people in the process of being smuggled. In a reactive investigation, the investigator is likely to be faced with:

- A number of people, which may include children, who might not speak the investigator's language.
- A crime scene.
- An extremely confusing picture of events.

It is the responsibility of the first investigator who arrives on the scene to ensure that:

- Any threat to life is addressed.
- Basic needs are met.
- Human rights of smugglers and migrants are protected.
- Order is maintained.
- Facts briefly detailing what has happened are obtained.
- Potential witnesses are identified.
- The crime scene or place of arrest is secured.
- Any suspects (smugglers) are detained and isolated where possible from migrants until other investigators or specialists arrive.

Once these actions are taken, the investigation can move forward.

Once the investigation begins, however, the event being investigated is often dealt with as if it is of an isolated or one-off type. This should not happen. In reactive investigations, investigators should ask themselves some of the following questions:

- Has this happened before?
- Were there previous tests of the route, carried out by the smugglers, to assess the method used (often referred to as dummy runs)?
- How many other trips have been made?
- Where is the money?
- What country do those smuggled come from and can the authorities in that country be approached for advice or assistance in conducting the investigation?
- Have they been through transit countries to get here? If so, can they be approached?



Example: challenges posed by investigations into the smuggling of migrants

Some investigations may involve hundreds of migrants. For instance, to deal with a migrant-smuggling situation in a North American country, special provisions had to be made. Buses were required to transport people in remote areas. Several officers were required to process the 300 migrants and the smugglers involved, and to distinguish between them. Officers on board the boat required appropriate attire and equipment so as to remain protected from the health risks they confronted.

**Example: reactive operation — Mr. and Mrs. Y**

Mr. Y is driving a car across a land border. In the front are his wife and two children. The car is stopped for a routine inspection. The boot of the car is opened and two people are found.

The car driver and his wife are arrested and the children are taken into care until another family member arrives to take custody of them.

The people in the boot claim that they paid Mr. Y \$1,000 each to be collected and taken across the border. They had been told by Mrs. Y, the wife, to be at a certain point and at a certain time for collection and to have \$1,000 each.

Mr. Y was searched and found to have \$2,000 on him. Mrs. Y admitted to having arranged this smuggling venture. Examination of both of their bank accounts showed that they had over \$40,000 in savings, although their combined incomes totalled just \$18,000.

Both Mr. and Mrs. Y were convicted and imprisoned and their assets were seized.

**Case study****Mrs. C**

A random police and tax control was established at the border and a foreign-registered hire car, driven by Mrs. C, was stopped. Inside the car were four passengers and Mrs. C. She informed the police that she had picked up her passengers with no prior arrangement at a nearby garage, close to the border. They all wanted to go to Anyland and she agreed to take them. None of the passengers held valid passports or identity documents and all five people were arrested.

Mrs. C was searched and found to be in possession of identity papers from the Republic of X. She had two mobile telephones and rental papers for the car showing that she had hired it for three days. She told police that she lived 1,400 kilometres (km) from where she had been arrested and was going to a hotel somewhere in Anyland. Mrs. C was unemployed and had no visible income.

The hire company confirmed that the car had been rented and advised that it had travelled over 2,000 km since she had rented it the previous day. The company further explained that she had rented four other cars within the previous three months and had covered over 16,000 km.

Examination of the mobile telephones showed that someone had tried to contact her twice after her arrest. The caller's number was known to police as that of someone

involved in smuggling migrants. Cell site analysis showed that she had also been on or near the border with two other countries in the 12 hours prior to her arrest.

Enquiries centred on a toll-road pay booth produced numerous photographs of Mrs. C passing along the road, close to a border, with different people in her car each time. Photographs taken of the car on the return route from Anyland showed that she had been alone.

Mrs. C was eventually convicted, imprisoned and ultimately deported from Anyland.

As can be seen from the case study above, when the reactive investigation is conducted properly, it can yield excellent results with minimal costs and human resources.

The investigator's role does not end with the conclusion of an investigation. The investigator should aim to make his or her job easier by passing on lessons learned and information on what would be required in future, to front-line officers. Often, these are the people who are the first to arrive at a scene and who may be there for some hours before a more experienced officer arrives. Providing checklists or help cards to border, police or immigration officers should be considered. After all, if front-line officers get it right, the investigator's job will be easier, more quickly carried out and ultimately more successful! The collection of relevant intelligence may lead to proactive investigations.

Also, the investigator should remember to provide feedback to those who provided information to him or her, so that they continue to do so.



Questions and exercises

- Have you had experience with reactive investigations? What events triggered them?
- What laws in your country apply to the situation of minors and other vulnerable people?
- When you are trying to distinguish between different types of people (asylum-seekers, say, versus trafficked victims), who are your partners?
- What are the key priorities of the first investigator to arrive on the scene?
- Read the example above concerning Mr. and Mrs. Y. You are a law enforcer, and the first person at the scene.

What do you do?

What are your objectives?

Who do you contact?

What should be done with the people in the boot?

In what way would your answer be different if they were children?

- Do you have another example of a good, simple reactive investigation? Why was it good?
- Explain why the case study above involving Mrs. C is an example of a proactive or a reactive investigation.
- Have you ever been the first officer on a migrant smuggling scene?
 - What did you do?
 - What would you do differently next time?

D. Proactive investigations

A proactive operation usually commences in response to information or intelligence received. Often such an investigation allows adequate time for investigators to carefully plan all stages of the investigation and to consider all standard and “special” (covert) investigative techniques (see module 5). In this type of investigation, the investigators have slightly more control over how they will collect evidence and seek to prove their case.

The key to a successful proactive investigation is intelligence and its proper use. (Module 6 looks at intelligence issues in greater depth.) Generally, a proactive investigation will be triggered by an event that has come to the attention of law enforcement officers. For example, law enforcers may receive a phone call reporting suspicious activity. That event is usually researched in an attempt to establish if it is one-off or part of a larger group of similar or related events.

It is at the research stage of a proactive investigation in particular that things can begin to go wrong. Experience has shown that intelligence can often be developed too far: producing a bigger picture, crimes continue to be committed and lives may be put at risk. The example below highlights this fact.



Example: intelligence

Information was received that showed that a particular route had been chosen to smuggle migrants into country Z from country A using small boats. During the several months required to compile a complete picture detailing boats, owners or users, addresses, telephone numbers and credit cards, three other boats had arrived with their human cargo. All of those who had landed entered the country illegally and everyone being smuggled had had their lives put at risk by the use of small, improperly equipped boats. While the overall intelligence package provided to the operational unit was of very good quality, the situation had become too complicated to allow many of the leads to be followed, and criminality had been ignored and lives had been put at risk.

If investigators work separately from those who collect, collate or analyse intelligence, then they must establish a close link that will protect the intelligence while still allowing

investigators to act when the time is right. Investigators must ensure that their colleagues in the intelligence section understand what they are trying to achieve and what, as investigators, they require from them.



In order for successful criminal justice outcomes to be achieved, it is important to ensure that there is full cooperation between investigators and prosecutors and/or the investigative judge. To ensure that evidence is admissible in court, consultation should occur at the earliest stage practicable.

Once the investigators have a picture of what is going on, they need to look at deployment of law enforcement tactics from all possible angles. Below is an example involving a migrant smuggling group with some indications of how law enforcement agencies can “attack” the group, that is, of how law enforcement agencies can approach and tackle criminality in a proactive way.



Example: proactive “attack” on a group engaged in the smuggling of migrants — Mr. C

Information is received that suggests that Mr. C is smuggling migrants into country B by concealing them in the backs of lorries. Once in country B, the migrants are delivered to a service station where they are collected by other vehicles.

Mr. C owns a haulage company. Investigations identify a mobile phone for Mr. C and billing information received indicates that each day that a group of migrants was smuggled, he had made a telephone call to Mr. H shortly before the group was deposited at the service station.

Mr. H is subjected to both conventional and technical surveillance, using a tracking device, and he is caught visiting a house where a number of migrants are seen coming and going. Surveillance is conducted at a service station and Mr. H is seen collecting a group of migrants who have recently left the rear of a lorry. He takes them to the house and then leaves to meet Mr. C at his office.

Mr. C, Mr. H and the lorry driver are all arrested.

It is by using law enforcement techniques such as those described above that investigators are able to move quickly towards a conclusion. When commencing proactive investigations, one should always set the objectives and work towards them.

Finally, when the objectives of proactive investigations are being considered, one should always look at what can be done to procure evidence or intelligence while, hopefully, at the same time, disrupting a group’s activities or preventing the illegal entry of people. The following example shows how this can be achieved.



Example: disruption and evidence collection

Intelligence suggests that a criminal group is using the crossing at X to move migrants across the border. They have chosen this spot because it is policed only during daylight hours.

An operation is mounted whereby the migrants are arrested shortly after they have crossed the border, although at a distance from the actual crossing point. This occurs on several occasions and a 24-hour immigration presence is then introduced.

Illegal entry using this crossing point stops and the law enforcement agencies have obtained the opportunity to debrief many smuggled migrants and to substantiate evidence of the method by which they cross the border.



Questions and exercises

- With reference to the box entitled “Example: intelligence”, regarding investigations into the smuggling of migrants, explain why the example provided does not demonstrate an intelligent use of intelligence.

When should the intelligence have been passed to an operational unit?

- When conducting proactive investigations in your country, with whom do you need to cooperate in order to secure support for a prosecutorial goal?
- With reference to the example of intelligence-gathering featuring Mr. C, and considering all of the facts provided in the example above, what would you have done differently?

Would a “simple” police presence have worked as well?

- Have you had experience of receiving intelligence that led to a proactive investigation into the smuggling of migrants? Describe this experience in an example box like the one above.

Can you provide any local examples?

E. Smuggling of migrants: crime scenes

In many ways, dealing with a crime involving the smuggling of migrants is just like dealing with any other crime, but there are a number of important factors to take into account.

What might constitute crime scenes for the smuggling of migrants?

In general, a crime scene is any area where physical traces of crime are left. Scenes signalling the smuggling of migrants encompass:

- People: bodies and clothes of migrants and smugglers.
- Vehicles within which migrants are being or have been transported: cars, trucks, buses, boats, planes etc.
- Buildings where migrants have lived or are living: flats, houses, barns etc.
- Buildings that smugglers use: hotels, bars, travel agencies, airports etc.

Given that cases of smuggling of migrants cover several stages, there is likely to be a number of crime scenes.

Physical traces that may be recovered at crime scenes include biological samples (e.g. blood, urine, saliva), fingerprints and other body-part prints, fibres and other micro-traces, documentary evidence, information technology (IT) and other electronic equipment.

What do you need to extract from the examination of smuggling of migrants crime scene?

You will want not only to detect evidence of individual crimes (assault, for instance) but also to determine who has been involved in the process and what role they have played.

By examining a scene in a case of smuggling of migrants we may find evidence of:

- Smuggling of migrants.
- Suspected smugglers of migrants.
- Smuggled migrants and victims of crime.
- The age of the migrants.
- Corroboration of a migrant's account.
- The links between suspects, migrants, locations, vehicles, documents etc.

Locations and items that may provide forensic evidence include:

- Offices, which may contain employment records or evidence of who has been controlling a business.
- Financial records, which may prove that smuggling has occurred and may help locate money to be seized.
- Sleeping places: linking a person to a sleeping place reveals the conditions they were kept in; they may also contain evidence hidden by smuggled migrants.
- Communication systems, which can reveal links to other smugglers, and prove that someone has been operating a smuggling business.
- Vehicles, which may reveal who has been transported in them or prove that they have been used in the smuggling of migrants.

Examining crime scenes: what you should do?

In general, at all crime scenes you must:

- Protect and preserve the scene.
- Control entry and exit.
- Preserve evidence.
- Call in trained crime-scene examiners or specialized investigators or both.

As some migrants may be victims of crime, try not to destroy their potential trust in you, and always think of your safety and the safety of others!

More specifically you have to:

- Tell people to stay where they are.
- Note who is where.
- Question people individually.
- Ask people about the location of their personal property.
- Protect the scenes you identify: this may simply mean shutting a door, but in some cases you may have to cover an entire area. In the case of a vehicle, you may have to take it to a dry, secure area. Keep records of every move and every person possibly in contact with evidence. Do not touch anything with your bare hands, if possible.
- Search people you find — where your laws permit. Seize anything that might provide evidence (see below for guidance on seizing property).
- Where victims of crime are identified, ask presumed victims not to change clothes although this may be difficult: victims' clothing can contain a lot of evidence. If victims are scantily clad, or you suspect sexual violence, they should be given clothing to cover themselves.
- Do not switch off electrical equipment, including phones, computers etc., and do not let anyone else switch it off.
- Inform the crime scene examiner of what you know: this will include details such as where people were found etc.

Seizing property

Ideally, you should wait for a crime scene examiner to arrive before you seize any property but for various reasons this may not be possible. If you do have to seize property:

- Record where items are located before they are moved. Ideally, they should be photographed; however, you can use drawings, plans and notes.
- Handle items as little as possible.
- Record who has handled items.
- Store items properly: anything containing biological samples should be put in a receptacle that can “breathe”, such as a paper bag or a cardboard box.

- Label it: indicate clearly who has recovered the sample and give the sample a unique reference number.
- Electrical equipment: obtain expert advice on what to do with it if you can. If you cannot do so, switch it off at the mains but do not otherwise tamper with electrical equipment.
- Financial records: anything containing recorded figures should be seized and preserved. Experts can later decide if it is relevant.

Clothing

Generally, the advice is that clothing should be removed only in the presence of specialist crime scene examiners. If possible, presumed victims should remain in their clothing until a trained person arrives.

However, if specialists are not available or will not be available only after a considerable period of time, it may be necessary to remove a victim's clothing. Forcing a person to remain in dirty clothing may hinder them from cooperating with you and possibly constitutes a breach of their human rights. Forcing them to remove their clothes also constitutes a breach of their rights.

You should explain to victims why it is important to stay in their clothing until a trained person arrives, but if clothing has to be removed, then:

- Remove clothing only with the consent of the person.
- Remove clothing only in the presence of people of the same sex as the victim.
- Photograph or record a description of the clothing and its condition before it is removed.
- Each item of clothing should be removed separately.
- Each item of clothing should be removed with the person standing over a large clean piece of paper.
- Each item of clothing should be placed in the paper and wrapped individually.
- A new piece of paper should be used for each item of clothing.

Each wrapped piece of clothing should be labelled with a unique number.



The welfare of human beings is the immediate priority of any investigation.

Refer to module 9 for human rights considerations.

F. Aggravating and mitigating factors

Aggravating and mitigating factors are generally matters for prosecutors and the judiciary to consider. Law enforcement plays a key role in supporting their functions. These are factors to be considered during the trial and sentencing of a convict. The consideration of aggravating and mitigating factors during sentencing are dependent on the relevant evidence gathered by the investigators within the arena of the crime investigation.

The presence of either aggravating or mitigating factors may have an impact on priority setting at the commencement of investigations. If an investigator is handling several cases, an aggravating factor may be what leads one investigation to be given a higher priority than another. Similarly, mitigating factors may lead to a decision not to invest resources in a particular investigation.

Some of the aggravating and mitigating factors that could possibly influence investigations are given in the table in module 7.B. It must be remembered that these may assist in determining only if an investigation should be pursued or prioritized; the judiciary concerned will ultimately have to consider similar issues at the time of sentencing.

In cases where other offences are committed, investigators should remember to consider investigating them as well. The commission of an assault during a smuggling of migrants operation is not simply an aggravating factor: it is an offence in its own right, and should be investigated as if it had occurred separately.

See module 7 for a list of aggravating and mitigating factors.



Questions and exercises

- Are you aware of any cases being taken on or rejected because of aggravating or mitigating factors?
- Can you add any other aggravating or mitigating circumstances to the table in module 7.B?
If the elements you added were present in a case of smuggling of migrants, what impact would that fact have on your decision to prioritize or not prioritize action on that case?
- Create a list of five aggravating circumstances and five mitigating circumstances.

G. Considerations at the arrest stage

If your investigation has gone well, be it a proactive or reactive one, and one of your objectives is to arrest those involved either with a view to prosecution or as part of a disruption, then there are some factors that you may wish to consider.

Initial considerations at the arrest stage include ensuring that there is a legal basis for carrying out an arrest, and advising the detained persons of their right to counsel and their right to refrain from making incriminating statements or admissions. This will vary according to the laws of your country.

Some considerations are set out below that may assist in either planning arrests or searches or in arrests that have already been made (e.g., in a reactive investigation):

<i>Area of concern</i>	<i>Considerations</i>
Evidence	Do you have enough evidence to justify an arrest? Is there a test to determine whether you should carry out the arrest? What is to be the timing of the arrest phase to obtain the best possible result?
Authority	Do you need a senior officer or judge to authorize an arrest? Do you need an arrest or search warrant? What are the rights of the arrested persons that come into play upon their arrest?
Searches	Do you need a senior officer or judge to authorize a search? Do you need a search warrant? If you are to search premises, have you identified them? If they are not to be searched simultaneously can you secure them? Do you have the means to seize and store any items discovered? What is the policy on seizing exhibits or evidence? Is specific paperwork required?
Officers	Do you have enough officers to achieve what you want to? Do you have female officers available in case you find female suspects or smuggled migrants? Do you have enough officers (and vehicles) for transportation of suspects or smuggled migrants, if required? If there is the possibility of officers' being infected with disease (e.g. tuberculosis), what steps are to be taken to minimize their risk?
Smuggled migrants	Do you need to liaise with the immigration authorities? Do you need to pre-warn non-governmental organizations or other service providers? Who will deal with any smuggled migrants, for example, with interviewing or debriefing them? If any smuggled migrants are likely to be discovered, should a medical professional be in attendance (rather than respond to a subsequent call)? What will happen to any children discovered? Are plans in place to deal with them appropriately? Will asylum-seekers, smuggled migrants or trafficking victims be dealt with differently initially? If so, how? Do you have adequate resources to ensure that the health needs of migrants are met? Will you need to segregate migrants according to gender or health conditions?
Language	Do you need interpreters for either suspects or any smuggled migrants? If so, consider obtaining them in advance. If this cannot be done, consider having grounds, reasons for arrest or search written in advance in the relevant language. Is there any risk of corruption of interpreters?
Crime scene	Do not forget that you will be entering a crime scene. Take advice from a senior officer or specialist in advance.

As has been stated elsewhere in this module, either you could be encountering a crime scene at the outset of a reactive investigation, or there could be a clear potential for your doing so during an arrest or search phase. This presents several clear forensic possibilities which may assist with the investigation.

In any arrest or search phase, always consider what you are going to do and why and how you are going to do it. It cannot be stressed enough that in investigations into the smuggling of migrants, you are dealing with human beings, not inert substances. Plan carefully and plan again for all foreseeable eventualities.

Once you have made an arrest, either as a result of a reactive response or a pre-planned action, it is highly likely that you will want to interview your suspects.

See module 2.D for practical guidance on taking statements.

See module 9.E for human rights considerations on arrest.



Questions and exercises

- According to the laws of your country, what rights do the arrested persons have at the time they are taken into custody? Must they be advised of their rights?
- What authority do you need to arrest and/or search?
- What are your processes?
- Do they allow you to act quickly enough where lives are at stake?
- How can you make the conduct or the process quicker?
- What will you do if you do not have enough officers?
- What will you do if you do not have interpreters with you?
- Can you add any bullet points under section E above on smuggling of migrants crime scenes, based on your knowledge and on experiences in your own country?

Which of the above points are applied in your country context? Which are not feasible? Why?

H. Disruption techniques

Disruption aims to interrupt criminal activities, often without prosecuting or even arresting the key actors involved in the commission of the crimes.

The techniques utilized will vary from country to country. You should therefore consult your senior officers regarding any permissions that may be needed before disruptive techniques can be applied.

The decision to employ disruptive techniques can be the outcome of a number of factors, namely:

- Strong suspicion that an offence was committed without sufficient evidence to warrant initiating prosecution or a criminal justice disposal.
- Insufficient resources to pursue a criminal investigation.
- Their use as a tactic as part of an investigation, e.g., in the seizure of cash being moved about by criminal parties, or the arrest of a low-level criminal involved.
- Target hardening, that is, identifying the method being used and making it more difficult for that method to be employed, e.g., use of heartbeat/carbon dioxide detectors at border crossings; safeguards in passports to make them harder to forge.
- Their being the operational objective from the outset, that is, not to pursue a criminal investigation or judicial disposal, but simply to disrupt a criminal group's activity as in, for example, the targeting of people working irregularly (for instance, by raiding construction sites that employ irregular migrants). This may not stop the smuggling but it may make it a great deal harder for criminal groups to operate or to recruit migrants if work is not available.

It is often the case that a decision is taken to disrupt an organized criminal group either because there is insufficient evidence to support a prosecution or because it will take too long or be too costly (in terms of both finances and resources) to prosecute. It follows that disrupting a crime or criminal group is usually better than doing nothing at all. Similarly, disruption of an organized criminal group may be pursued in order to protect an intelligence source, whose existence may become known if a judicial disposal is sought.

Disruption can also be part of your operational plan. You may wish to disrupt the criminal group



Example: disruption technique

A man is employed as a lorry driver to smuggle migrants across a border. He is, however, disqualified from driving. The police are given this information by a close friend of the driver who believes that he is likely to be the only one who knows this information. To protect the informant's identity, the driver is arrested on the way to the border as the result of a random stop by police. This disrupts the criminal group, prevents the source of the information from becoming known and may result in the criminal group's having to use other drivers or undertake the task itself.

either to force it to change its methodology to one that better suits you, or to force more senior members of the group to take risks they would not ordinarily take.



Examples: disruption to change crime methodology or to force senior members of criminal groups to take risks

A forger could be removed from a smuggling operation, thereby forcing the group to rely on methods other than forging passports.

A lorry driver could be arrested the day before a smuggling operation is due to take place, which would force a senior member of the group to drive the lorry himself, thereby exposing himself to you (see the above example).

A criminal group regularly uses a small airport, which has no permanent immigration presence, to smuggle in groups of migrants. The pilot is arrested on the next flight and an immigration presence is established.

When seeking to disrupt for this reason, you must be careful to balance what you hope to achieve against any risk that the organized criminal group will change to a method beyond your control or to one that involves greater risks.

Finally, disruption may support an investigator's objective to make the smuggling of migrants harder to commit. While you, as an investigator, are unlikely to be able to bring about changes in law or policy, your senior officers or judiciary may be able to exert some influence. Disrupting and reporting constitute an extremely useful tool for making your job easier and the criminal group's crime harder to commit.

The use of different disruptive techniques must, like most interventions, be assessed on a case-by-case basis. Below are some examples of disruptive techniques and the part they can play in an investigation or target-hardening operation.

<i>Tactic</i>	<i>Potential impact</i>
Lower-level arrests or immigration detections	Potentially significant. The arrest of those at the lower end of the spectrum of migrant smuggling (such as drivers) can lead further up the chain. Potential for these people to give evidence against others or create openings for informants or undercover officers. This tactic may also lead to the direct engagement in criminal activities by more senior members of the group.
Seizure of money or proceeds of crime	Significant impact always. May force groups to take risks to make money more quickly or in a different manner.
Use of the media	Potentially significant. The use of the media to support investigations into migrant smuggling is often underrated. The media can raise the profile of the smuggling of migrants, which may lead in itself to target hardening or law or policy changes, to the coming forward of people and to the deterring of those who are considering engaging in criminal activity. This tactic may also serve to reduce the demand for a smuggler's services by showcasing dangerous conditions or unsuccessful attempts to enter countries.

<i>Tactic</i>	<i>Potential impact</i>
Return of smuggled migrants	Significant. If smuggled migrants are simply returned to their country of origin or residence, then the group that has brought them may lose credibility. The play of market forces may result in a lack of migrants wishing to be smuggled by a group that has a limited chance of achieving success. On the other hand, this must be carefully balanced against considerations of the benefit to be derived from the role that migrants can play in investigations and prosecutions and against other factors.
Enforcement of other laws	Potentially significant. The application of all available laws to disrupt organized crime groups is often extremely useful. Arresting or stopping suspects for vehicle offences and/or minor crimes often produces fresh intelligence for investigation teams. As can be seen from an example provided earlier within this module, a routine stop can bring forth results well above expectations. Furthermore, this tactic puts pressure upon members of the group who may then withdraw, allowing other covert means to be considered.
International cooperation	Significant. This particular subject is covered in module 8. Liaison with international colleagues to prevent people from travelling or to focus some law enforcement efforts overseas ensures that crime groups know that they cannot operate internationally with impunity. The use of airline liaison officers in some countries has dramatically reduced the number of persons travelling on forged passports and the like. Contact the International Criminal Police Organization (INTERPOL), the European Law Enforcement Agency (Europol) or other regional law enforcement agencies, as appropriate, to assist with international disruption.



Example: disruption

A criminal group smuggles migrants into Anyland and the majority work on farms for which the criminal group holds the contract for fruit picking. The smuggled migrants are all working without permission.

You launch a series of immigration raids at different venues, arresting those who are working without permission. As this results in the criminal group's having insufficient workers to complete their contract, they either lose the contract or have financial penalties imposed on them as a result of their failure to comply with the terms of the contract.

Many smuggled migrants arrested in these raids are subsequently returned to their place of origin. Word then spreads within their community that the criminal group does not provide good service and that the risk of being deported, after having paid to be smuggled, is high. The criminal group then struggles further to secure workers under their contract.

Disruption techniques will often create the problem of displacement, whereby (organized) criminal groups, to evade detection, simply move their activities or change their methods. Generally, disruption will create new opportunities to enhance intelligence or obtain new information. However, once a disruption takes place, officers must be aware of the potential for criminal activities to simply be displaced and, where possible, they must take steps to avoid this (for a further discussion, see the examination of risk considerations in annex II). Use of organizations such as INTERPOL may assist in informing other countries of methods and trends and in advising of the possible occurrence of displacement.



Questions and exercises

- Are disruption tactics allowed by your policies and/or law?
- What other reasons can you think of for employing the disruptive techniques listed above?
- In your country, what laws may be applicable to disruption techniques utilized in relation to the smuggling of migrants?
- Are you required to seek permission or authorizations before using disruptive techniques in your country? From whom?
- Can you think of another example of a disruption technique to include in the box above entitled “Examples: disruption to change crime methodology or to force senior members of criminal groups to take risks”?
- Can you provide any examples of investigations where disruption tactics would have worked and benefited your investigation?
- Have you had any experience in using disruption techniques?
 - What led to the decision to use disruption techniques?
 - Which disruption techniques were used?

I. Concluding remarks

The main message offered by this module is that the smuggling of migrants should be investigated with an open mind. Investigators should be aware of other potential offences involved and investigate them as they would any other serious crime, but with the understanding that humans rather than goods or substances are the target of this crime.

Always seek advice, at an early stage, from your prosecutors or judiciary (as appropriate) and from senior officers when commencing investigations into the smuggling of migrants. The investigation of offences with a view to establishing the existence of a crime or proving or disproving who has done what and to whom is the cornerstone of your work. It is useless to conduct an investigation whose primary aim is to secure a judicial disposal without collecting sufficiently relevant evidence in a format that will both be admissible in court and help achieve your goal. Whether your investigation is reactive or proactive (or a combination of both) depends on the circumstances of the case.

Depending on the judicial system that applies, early consultation with a prosecutor or judge may occur automatically. However, if no such process exists, early consultation with a prosecutor, investigating judge or senior officer would be beneficial, particularly given the potential complexity of investigations into the smuggling of migrants, and their international and potential political ramifications.

You should also consult with other agencies at an early stage to determine whether they will assist with your investigation. The immigration authorities and non-governmental organizations and other service providers (such as social services) are prime examples of agencies that should be contacted as soon as possible, since they will probably be able to provide your investigation and the people involved with invaluable assistance.

Objectives must be set and worked towards.² If you aim to arrest people, then work towards gathering the right type of evidence. If you are seeking to disrupt a group, then look for the form of disruption that best suits your organization. Be mindful of what you want to achieve, how you will achieve it, and what its negative impacts could be.



Self-assessment questions

- What is a proactive investigation? How does it start?
- What is a reactive investigation? How does it start?
- What is the difference between a reactive investigation and a proactive one?
- List some general considerations that need to be taken into account when conducting an investigation.
- Provide some examples of aggravating circumstances.
- Provide some examples of mitigating circumstances.
- What is the relevance of aggravating or mitigating factors to investigations?
- What key considerations need to be taken into account before arrests are made or searches are carried out?
- What does it mean to disrupt a migrant smuggling network?
- Provide some examples of disruption techniques.

²This is discussed in annex II.



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