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### ESTUDIOS

#### **Modern Slavery and Migrant Smuggling: A Sustainable Development Perspective**

La esclavitud moderna y el tráfico ilícito de migrantes: una perspectiva desde el desarrollo sostenible

Professor Natalia Szablewska

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# Modern Slavery and Migrant Smuggling: A Sustainable Development Perspective

*La esclavitud moderna y el tráfico ilícito de migrantes:  
una perspectiva desde el desarrollo sostenible*

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**Summary:** I. Introduction.—II. Modern slavery: the clandestine nature of human exploitation. 1. Regulating modern slavery.—III. People smuggling in modern times. 1. Regulating migrant smuggling. —IV. Modern slavery and migration in the context of sustainable development.—V. Conclusion.

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**Abstract:** Modern slavery—denoting acute exploitation of people for personal or commercial gain—is said to affect nearly 50 million people around the globe, making it a global issue that requires coordinated cross-sectoral and integrated responses. Some efforts have been made to that effect, including through an emerging legislative regulation at domestic and regional levels. Migrants, in particular those with unsettled status, are particularly vulnerable to modern forms of slavery due to manifold enabling circumstances, including the lack of, or capacity to offer them, protection or limited access to legitimate forms of employment or social protection. However, global responses to migrant smuggling and irregular migrants are in stark contrast to the commitments made to address modern slavery. The increasing focus on the securitisation of migration obscures the underlying social, economic and political ‘push’ factors that fuel modern slavery. Thus, a more comprehensive response is needed that examines the issues of migration management, market regulation and development more widely. This paper uses a comparative lens to examine global developments in regulating labour-related forms of modern slavery vis-à-vis migration management in the context of achieving sustainable development goals.

**Keywords:** modern slavery, migrant smuggling, irregular migration, migration management, sustainable development

**Resumen:** *La esclavitud moderna —que denota la explotación aguda de personas para beneficio personal o comercial— afecta a casi 50 millones de personas en todo el mundo, lo que la convierte en un problema mundial que requiere respuestas coordinadas intersectoriales e integradas. Se han hecho algunos esfuerzos en este sentido, incluso mediante una nueva normativa legislativa a nivel nacional y regional. Los migrantes, en particular los que no están en situación regular, son especialmente vulnerables a las formas modernas de esclavitud debido a las múltiples circunstancias que los favorecen, como la falta de protección o la capacidad de ofrecerla, o el acceso limitado a formas legítimas de empleo o protección social. Sin embargo, las respuestas globales al tráfico de migrantes y a los migrantes irregulares contrastan fuertemente con los compromisos asumidos para abordar la esclavitud moderna. La creciente atención a la securitización de la migración oculta los factores sociales, económicos y políticos subyacentes que alimentan la esclavitud moderna. Por lo tanto, es necesario dar una respuesta más amplia que examine las cuestiones de la gestión de la migración, la regulación del mercado y el desarrollo en general. Esta reflexión desarrolla un enfoque comparativo para examinar la evolución mundial de la regulación de las formas de esclavitud moderna relacionadas con el trabajo en relación con la gestión de la migración en el contexto de la consecución de los objetivos de desarrollo sostenible.*

**Palabras clave:** *esclavitud moderna, tráfico de migrantes, migración irregular, gestión de la migración, desarrollo sostenible.*

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## I. Introduction

The term ‘modern slavery’ (or ‘modern-day slavery’, ‘contemporary slavery’ or ‘neo-slavery’) has been gaining popularity in recent years, with a number of countries passing legislation to address and prevent its different forms. Even though there is no internationally agreed definition of it, modern slavery is widely understood to cover different forms of acute human exploitation, ranging from forced or bonded labour, human trafficking, forced marriage and forced organ harvesting to orphanage trafficking. More recently, governments have shifted their attention to the private sector recognising the pervasiveness of modern slavery in global supply chains.

Various enabling factors have been identified as increasing risks of modern slavery, with migrants<sup>1</sup> being considered highly vulnerable, particularly when their legal status is unsettled. Migrant smuggling, whereby the migrant’s irregular entry to another country is facilitated usually with their consent for financial or other material gains, heightens the risk of exploitation in the destination country. Modern slavery is also highly profitable, with US\$150bn in profits every year being generated from forced labour alone,<sup>2</sup> and migrant smuggling is estimated to bring a profit between US\$5 to 7bn worldwide per year.<sup>3</sup> Thus, even though one can take place without the other one, in that not every smuggled migrant will necessarily become a victim of modern slavery and not every victim of modern slavery is a migrant, these practices are mutually reinforcing by creating conditions conducive to both practices flourishing. Also, in many instances, the same criminal networks operate across smuggling and acute exploitation,<sup>4</sup> which, in practical terms, further blurs the line between these two legally different operations.

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<sup>1</sup> In this paper, the term ‘migrant’ follows the understanding provided by the International Organisation for Migration (IOM), that is any person who is moving or has moved across an international border or within a country, temporarily or permanently, away from their habitual place of residence for a variety of reasons and regardless of their legal status or whether the movement is voluntary or involuntary (see IOM, *Glossary on Migration* (Geneva: IOM, 2019, 132-133)); with the term ‘international migrant’ denoting someone who changes their country of usual residence.

<sup>2</sup> International Labour Office (ILO), *Profits and Poverty: The Economics of Forced Labour* (Geneva: ILO, 2014).

<sup>3</sup> United Nations Office on Drugs and Crime (UNODC), *Global Study on Smuggling of Migrants* (New York: UNODC, 2018). However, estimating the profits from people smuggling is a contested issue as many ‘smugglers’ are paid in-kind and offer smuggling services for altruistic rather than financial reasons, see Chapter III below.

<sup>4</sup> European Union Agency for Law Enforcement Cooperation (Europol), *EU Serious and Organised Crime Threat Assessment, A corrupting influence: the infiltration and undermining of Europe’s economy and society by organised crime* (Luxembourg: Publications Office of the European Union, 2021).

Despite modern slavery and migrant smuggling being mutually reinforcing practices, there is a growing gap in protection in relation to increasing regulatory interventions for modern slavery and that offered to irregular migrants. Many irregular migrants do not fall under the established legal categories for protection, which exposes them to additional hardship or denial of assistance. Yet, most irregular migrants face dangers and human rights infringements, the tackling of which requires inter-state and inter-agency cooperation, including better information and data sharing, as well as improving consistency and compatibility between international, regional and national legislation and law enforcement activities. Therefore, migrant management at the national and regional levels is not separate from or inconsequential to fighting modern slavery and other forms of human exploitation.

In the context of the global sustainable development agenda, providing universal goals and targets with an aim to eradicate poverty, reduce inequality within and between countries and ensure sustainable use of ecosystems, migration is recognised as key to achieving a sustainable future for all. The commitment to sustainable development, therefore, incorporates “international migration [as] a multi-dimensional reality of major relevance for the development of countries of origin, transit and destination which requires coherent and comprehensive responses” and involves “full respect for human rights and the humane treatment of migrants regardless of migration status”.<sup>5</sup>

This paper provides an overview of the legal developments in relation to modern slavery and its regulation (Chapter II), followed by a brief examination of the modern practice of people smuggling, including in the European Union (EU) context (Chapter III), to then turn to examine how the sustainable development agenda necessitates better coordination between migration management and market regulation to advance human development outcomes (Chapter IV), with the Conclusion (Chapter V) summarising the findings.

## II. Modern slavery: the clandestine nature of human exploitation

Modern slavery is believed to affect some 49.6 million people around the globe at any given time,<sup>6</sup> which makes it a bigger problem today than ever in

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<sup>5</sup> United Nations General Assembly (UNGA) Res 70/1, (21 October 2015) UN Doc A/RES/70/1, 29.

<sup>6</sup> ILO and Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (ILO, 2022).

history. The majority of those in forced labour are believed to be trapped in the private economy, across different sectors and geographical locations.<sup>7</sup> Certain industries, such as agriculture, construction, manufacturing, fishing and domestic services, are considered high risk for modern slavery practices throughout their operations and supply chains, making the private sector an important driver in facilitating as well as addressing modern slavery.

International migrants are particularly vulnerable to modern slavery,<sup>8</sup> as they are predominantly recruited for industries prone to a higher risk of exploitation, and, consequently, they are targeted by unscrupulous smugglers, traffickers or recruitment agents. In response to what is recognised to be a major global problem, states often respond by introducing policies aiming at limiting international migration expecting that it will prevent the exploitation of migrants within their national borders. The opposite, however, is often happening in that increased securitisation of migration leads to an escalation in demand for smuggling services. Those who might willingly arrange their passage to another country often became victims of exploitation and abuse, including sexual violence, by the ‘facilitators’ of migration<sup>9</sup> and fall prey to traffickers en route or when they reach the destination.

Thus, for a long time, governments’ prevention policies focused predominantly on raising awareness and educating at-risk groups, including in the countries of origin, of the dangers of irregular migration. However, despite high financial and resource investment in such campaigns, their impact has been limited or at best unknown. For instance, a recent systematic review of anti-human trafficking interventions has revealed that such campaigns have a negligible positive impact but often carry negative consequences, including exacerbating stigmatisation, marginalisation and discrimination of the most vulnerable, in particular migrant women.<sup>10</sup>

## 1. *Regulating modern slavery*

A number of international and regional programmes have been launched to facilitate inter-state collaboration and partnerships. These

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<sup>7</sup> *Ibid.*

<sup>8</sup> See also Krzysztof Kubacki *et al.*, ‘Vulnerable communities and behaviour change: a case of modern slavery in supply chains’, in *Beyond the dark arts: Emerging issues in social responsibility and ethics in marketing and communication*, ed. by L Brennan, L Parker, K Kubacki, Jackson M, Chorazy E and D Garg (World Scientific Publishers, 2022).

<sup>9</sup> Mixed Migration Centre, *Mixed Migration Review 2018. Highlights. Interviews. Essays*. Data. Ed. by C Horwood, R Forin and B Frouws (Geneva: Mixed Migration Centre, 2018).

<sup>10</sup> Natalia Szablewska and Krzysztof Kubacki, ‘Anti-human trafficking campaigns: a systematic review’, *Social Marketing Quarterly* 24, No 2 (2018): 104-112.

include the 2017 Call to Action to End Forced Labour, Modern Slavery and Human Trafficking, instigated by Australia, Canada, New Zealand, the United Kingdom (UK), the United States (US) and others, which has resulted in the adoption by these governments of the Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains,<sup>11</sup> aiming to eradicate slavery from the economy.

At a regional level, the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, established in 2002 and comprising 49 members including United Nations (UN) agencies, offers a strategic platform for collaboration between governments and businesses to tackle forced labour, human trafficking and modern slavery in the region. In 2018, the Bali Process Government and Business Forum focused on developing recommendations for ending these transnational crimes across the Indo-Pacific region, including in public and private supply chains.

By focusing on reducing demand, whether in relation to forced labour, exploitative services (including in the sex industry) or ‘donors’ in the context of the orphanage industry or organ trafficking, and by utilising the corporate social responsibility framework,<sup>12</sup> a number of states have introduced, or are in the process of developing, domestic regulatory frameworks pertaining to modern slavery in business operations and supply chains.

In an attempt to consolidate human trafficking and other slavery offences in its domestic legislation, the UK was the first country to introduce comprehensive modern slavery legislation (Modern Slavery Act 2015),<sup>13</sup> which is modelled on the California Transparency in Supply Chains Act 2010,<sup>14</sup> a sector-specific legislation focusing on retailers and manufacturers operating in the US state of California. In 2016, the then UK Prime Minister Theresa May stated that “[w]e need a radically new, comprehensive approach to defeating this vile and systematic international

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<sup>11</sup> See United States Department of State, *Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains*, 24 September 2018, accessed 30 September 2022, <https://www.state.gov/wp-content/uploads/2019/03/286369.pdf>

<sup>12</sup> In particular under the UN Global Compact, *The Ten Principles of the UN Global Compact*, 2000, accessed 23 May 2022, <https://www.unglobalcompact.org/what-is-gc/mission/principles>; UN Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, 2011, accessed 23 May 2022, [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf); Organization for Economic Cooperation and Development (OECD), *OECD Guidelines for Multinational Enterprises* (OECD, [1977] 2000); ILO, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* (Geneva: ILO 5th ed, 2017).

<sup>13</sup> *Modern Slavery Act 2015* (2015 c. 30).

<sup>14</sup> *California Transparency in Supply Chains Act 2010* (SB 657)



business model at its source and in transit”,<sup>15</sup> recognising that rather than it being a problem of few exploiters in the industry, modern slavery is a global issue that requires a systemic change to the business models and the wider business culture.

Australia followed suit and passed equivalent legislation at the federal (Cth)<sup>16</sup> and the state of New South Wales (NSW)<sup>17</sup> levels in 2018 (with the latter coming to force on 1 January 2022). The UK Act and Australian Act (Cth) require entities with annual turnover above certain thresholds (which differ) to audit their supply chains and report on modern slavery risks,<sup>18</sup> thus they aim to increase transparency in supply chains and corporate reporting. The specific modern slavery legislation operates alongside other mandatory human rights ‘due diligence’ laws,<sup>19</sup> like the French Duty of Vigilance Act 2017, the Dutch Child Labour Due Diligence Law 2019, the German Act on Corporate Due Diligence in Supply Chains 2021 (commencing on 1 January 2023) and the Norwegian Transparency Act 2021 (commencing on 1 July 2022). Similar legislation has been also considered in a number of other countries and jurisdictions, including Canada,<sup>20</sup> New Zealand<sup>21</sup> and Hong Kong.<sup>22</sup> In 2021, the EU Directive on mandatory human rights and environmental due diligence was proposed,<sup>23</sup> with the European Commission releasing the draft proposal in February 2022,<sup>24</sup> which lays the foundations

<sup>15</sup> Theresa May, ‘My Government will lead the way in defeating modern slavery’, *The Telegraph*, 30 July 2016, accessed 23 May 2022, <https://www.telegraph.co.uk/news/2016/07/30/we-will-lead-the-way-in-defeating-modern-slavery/>

<sup>16</sup> *Modern Slavery Act 2018* (No. 153, 2018).

<sup>17</sup> *Modern Slavery Act 2018* (No. 30, 2018).

<sup>18</sup> *Modern Slavery Act 2015* (UK) s 54; *Modern Slavery Act 2018* (Cth) Part 1(3); see also *Modern Slavery Act 2018* (NSW) which applies to government entities, including state-owned corporations in NSW (Part 1(3)(h)).

<sup>19</sup> Requiring companies to account for how they address their adverse human rights impacts.

<sup>20</sup> See Bill S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff 2021* and Bill C-243, *An Act respecting the elimination of the use of forced labour and child labour in supply chains 2022*.

<sup>21</sup> See, for example, Szablewska *et al.*, *An Opportunity for Impact: Recommendations for Regulating Modern Slavery in Supply Chains in Aotearoa New Zealand*, 2022, ISBN: 978-0-473-63292-2, accessed 23 May 2022, <https://modernslaveryrecommendations.nz/Recommendation%20paper%20-%20An%20Opportunity%20for%20Impact.pdf>.

<sup>22</sup> The Modern Slavery Bill was put for consideration before the Legislative Council in 2018, but due to mass expulsion and resignations of pro-democracy opposition lawmakers since 2020, doubts are cast on whether anti-slavery legislation will go ahead any time soon.

<sup>23</sup> See European Parliament Res 474/02, (10 March 2021), P9 TA(2021)0073.

<sup>24</sup> European Commission, Framework Decision on Strengthening the Penal Framework for Preventing the Facilitation of Unauthorized Entry and Residence’ was the first attempt to regulate smuggling (EC 2002/946/JHA, 2002).

for corporate sustainability due diligence, and would require businesses to respect human rights and the environment in their global value chains.

Undeniably, the plight of modern slavery victims has captured public imagination worldwide and galvanised a coordinated global response. This has led to considerable policy and legislative action in regulating modern slavery in operations and supply chains (of the private sector in particular) at the international, regional and domestic levels. With the outbreak of the COVID-19 pandemic in 2020, the most vulnerable and already exploited have been exposed to the heightened risk of modern slavery and there have been disruptions to the response efforts.<sup>25</sup> However, dealing with this complex socio-economic problem fuelled by processes of globalisation cannot be separate from migration and its management if we are to find a sustainable solution to the problem of social and economic vulnerability that ensnares people in modern slavery.

### III. People smuggling in modern times

People (also refer to as ‘human’ or ‘migrant’) smuggling is not a new phenomenon, and the practice has existed ever since political borders have been established and territorial sovereignty became entrenched, with nation-states deciding whom they permit to enter (or in some circumstances to leave) and on what grounds by regulating migration flows. The progressive escalation of restrictions on transnational mobility has, in turn, increased the demand for services in people smuggling. For example, before Spain and Italy introduced Schengen Visas for North Africans in the early 1990s, there was a relatively free flow of migration between North Africa and Southern Europe, but the augmentation of migration regulation increased irregular migration in the Mediterranean region, which then amplified further border securitisation.<sup>26</sup> Thus, it is the criminalisation and penalisation of smuggling that are relatively new, and they have been on a rise worldwide.

The dominant narratives and attitudes toward people smuggling have also changed over time. Historically, people smugglers were perceived as ‘enablers’ and often as ‘saviours’ of those who were escaping the persecution of oppressive regimes, such as Jews escaping Nazi Germany during the Second World War or from East Germany, and elsewhere in

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<sup>25</sup> See, for example, James Cockayne and Angharad Smith, ‘The Impact of COVID-19 on Modern Slavery’, *Our World*, 2 April 2020, accessed 23 May 2022, <https://ourworld.unu.edu/en/the-impact-of-covid-19-on-modern-slavery>.

<sup>26</sup> Ilse Van Liempt, ‘A Critical Insight into Europe’s Criminalisation of Human Smuggling’, *Swedish Institute for European Policy Studies* 3 (2016): 1-12.

the Eastern Block, to West Germany during the Cold War. Today, fairly similar reasons motivate migrant smuggling, that is conflict, economic desperation, poverty and states' restrictions on human mobility, yet "[s]mugglers are nowadays...perceived much more as criminals than before".<sup>27</sup> The change of rhetoric on why people decide to turn to smuggling (both those being smuggled and those engaging in smuggling) has further affected legal and political responses in that regard.

### 1. *Regulating migrant smuggling*

Human trafficking, like many other forms of modern slavery, and human smuggling are part of what are considered to be mixed-migration flows, defined by the International Organization for Migration (IOM) as "[c]omplex migratory population movements...as opposed to migratory population movements that consist entirely of one category of migrants".<sup>28</sup> From a legal perspective, the difference between one and the other was consolidated in 2000 when the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Trafficking Protocol),<sup>29</sup> supplementing the Convention against Transnational Organised Crime, was enacted. The Trafficking Protocol established the distinction between a trafficking victim (whether transported domestically or internationally) and migrant smuggling, which requires crossing an international border as prescribed under the Protocol Against the Smuggling of Migrants by Land, Air and Sea (the Smuggling Protocol).<sup>30</sup> Under the Trafficking Protocol, consent of a trafficked person is considered not relevant,<sup>31</sup> as one cannot consent to their own exploitation, but which is usually assumed in the context of smuggling. Despite neither smuggled nor trafficked persons being criminalised for the fact of being smuggled or trafficked, smuggling is often perceived as a 'victimless' crime (i.e., it is a crime against a state), whereas human trafficking, or other forms of modern slavery, never is. In reality, being smuggled often leads to similar consequences in that violence, including sexual abuse, kidnapping and robbery against smuggled migrants

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<sup>27</sup> *Ibid.*, 3.

<sup>28</sup> IOM, *Glossary on Migration* (Geneva: IOM, 2011), 63.

<sup>29</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, 2237 UNTS 319.

<sup>30</sup> Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, 2241 UNTS 507.

<sup>31</sup> Trafficking Protocol, art 3(b).

by their smugglers is estimated to account for between 50 and 76 per cent of reported incidents.<sup>32</sup>

In Europe, the French government's proposal in 2000 to the European Commission, on a Framework Decision on Strengthening the Penal Framework for Preventing the Facilitation of Unauthorized Entry and Residence,<sup>33</sup> was the first attempt to regulate smuggling. It was part of an agenda to "combat the aiding of illegal immigration both in connection with unauthorised crossing of the border in the strict sense and for the purpose of sustaining networks which exploit human beings" and aimed to supplement "other instruments adopted in order to combat illegal immigration, illegal employment, trafficking in human beings and the sexual exploitation of children".<sup>34</sup>

In the Asia and Pacific region, the 2015 Bay of Bengal migrant smuggling crisis that involved thousands of migrants from Myanmar and Bangladesh who got stranded at sea or whose bodies were uncovered in mass graves in South Thailand, prompted the Association of Southeast Asian Nations (ASEAN) to focus on combating the crime of migrant smuggling in the region<sup>35</sup> and triggered ASEAN to consider migrant smuggling as a transnational crime falling under its purview.<sup>36</sup>

At the international level, people smuggling is seen predominantly as an issue of transnational organised crime,<sup>37</sup> which has consequences for the level of support deemed appropriate for smuggled persons, as well as the assessment of their culpability. However, not all 'smugglers' are part of criminal groups and many are friends, family and community members or migrants and asylum seekers themselves who become facilitators of irregular or clandestine migration in an attempt to realise mobility goals.<sup>38</sup> Likewise, not all smuggled migrants are the same and the experiences—including exposure to violence and abuse—of those with larger economic

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<sup>32</sup> Mixed Migration Centre, *Mixed Migration Review...*, 122-123.

<sup>33</sup> Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence, 2002/946/JHA (Official Journal of the European Communities, L. 328/1, 2002).

<sup>34</sup> *Ibid.*, paras (2) and (5) respectively.

<sup>35</sup> For more information see <https://asean.org/>.

<sup>36</sup> UNODC, *Migrant Smuggling in Asia and the Pacific: Current Trends and Challenges* (Bangkok: UNODC, 2018).

<sup>37</sup> It needs to be noted, however, that smuggling does not require the involvement of organised crime to be punishable, see UN Convention against Transnational Organised Crime, Art 34(2); Smuggling Protocol, Art 4.

<sup>38</sup> See, for example, Gabriella Sanchez, 'Critical Perspectives on Clandestine Migration Facilitation: An Overview of Migrant Smuggling Research', *Journal of Migration and Human Security* 5, No 1 (2017): 9-27; Luigi Achilli, 'The Smuggler: Hero or Felon?' Policy brief, Migration Policy Centre (Florence: European University Institute, 2015); IOM, *Egyptian Unaccompanied Migrant Children: A Case Study on Irregular Migration* (Cairo: IOM, 2016).

and social capital differ, often significantly, from those who are poorest and most vulnerable.<sup>39</sup> Thus, the migrant smuggling landscape is much more diverse than often assumed and presented by law enforcement or in the media. Despite these lived experiences, the framing of the problem as one of organised crime affects how the motivations of smugglers are assessed, which has informed corresponding legal responses.<sup>40</sup>

The increase in land border regulation has prompted a shift in smuggling activities towards sea crossing, in particular in Europe since 2009.<sup>41</sup> There have been multiple reports in recent years of maritime migrant smuggling ending with boats capsizing never reaching their destinations as well as an increase in the use of ‘ghost ships’, where the crew abandons the vessel before it reaches its destination, forcing a rescue operation to save those onboard. One example involved a cargo ship *Ezadeen*, flying under a Sierra Leone flag, with 450 people onboard, mainly Syrian asylum seekers, which was intercepted by the Italian coastguards in 2015.<sup>42</sup>

Another regional example is that of Australia which, under its Operation Sovereign Borders,<sup>43</sup> intercepts vessels in international waters, justifying it on the grounds of the rise in maritime migrant smuggling, and often pushes or tows boats back to Indonesian’s territorial waters.<sup>44</sup> This policy has been widely criticised by the international community for putting the lives of migrants at risk and Australia flouting its international obligations,<sup>45</sup>

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<sup>39</sup> Daniel E Martinez, ‘Coyote Use in an Era of Heightened Border Enforcement: New Evidence from the Arizona-Sonora Border’, *Journal of Ethnic and Migration Studies* 42, No 1(2015):103-19.

<sup>40</sup> For an overview of the legal framing of people smuggling see Natalia Szablewska, ‘Human Smuggling and Human Trafficking’, in *International Conflict and Security Law: A Research Handbook*, ed. by S Sayapin, R Atadjanov, U Kadam, G Kemp, N Zambrana Tévar, N Quéñivet (TMC Asser Press, 2022).

<sup>41</sup> UNODC, *Global Study...*

<sup>42</sup> J Hooper, ‘Abandoned ship Ezadeen with 450 migrants on board being towed to Italy’, *The Guardian*, 2 January 2015, accessed 23 May 2022, [www.theguardian.com/world/2015/jan/02/abandoned-cargo-vessel-migrants-towed-italy-traffickers](http://www.theguardian.com/world/2015/jan/02/abandoned-cargo-vessel-migrants-towed-italy-traffickers).

<sup>43</sup> For more information see <http://osb.homeaffairs.gov.au>.

<sup>44</sup> This also violates Indonesia’s territorial sovereignty, see UNGA, *Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions*, 15 August 2017, UN Doc A/72/335, in particular para 33.

<sup>45</sup> For an overview of Australian refugee and asylum seekers policy see Kaldor Centre for International Refugee Law, ‘Australia’s Refugee Policy: An Overview’, 2020, accessed 23 May 2022, <https://www.kaldorcentre.unsw.edu.au/publication/australias-refugee-policy-overview>; also Natalia Szablewska, ‘Illegal immigrants, asylum seekers and Australia’s international obligations: the debate goes on’, *Australian Law Journal* 88, No 10 (2014): 707-714; Natalia Szablewska and Ratana Ly, ‘Regional collaborative responses to the global migration crisis: refugee law, human rights and shared state responsibility’, *Australian Law Journal* 91, No 3 (2017): 186-197.

including under the Smuggling Protocol and the principle of non-refoulement<sup>46</sup> that bars states from returning an alien to a place where they are likely to face persecution or their life would be threatened.<sup>47</sup>

There have been many more examples in recent years where migrant smuggling has resulted in migrants' lives being lost,<sup>48</sup> which is often a result of the absence of rescue or insufficient assistance offered by states, despite international obligations in this regard under different international law regimes, including international human rights law, international refugee law and international maritime law.<sup>49</sup>

The response of states to migrant smuggling and protection offered to irregular migrants is in stark contrast to the pledges and commitments made to address modern slavery. Yet, irregular migrants—facing harsh responses in relation to the lack of compliance with the requirements for legal entry into the host state—fuel the supply side of modern slavery, making the crime more difficult to detect, investigate and address.

Migrants in irregular situations should not face or fear repercussions for reporting violence, abuse or exploitation, which is also recognised under pillar three of the EU's action plan against migrant smuggling (2021-2025) on preventing exploitation and ensuring the protection of migrants,<sup>50</sup> which prescribes that a migrant who is a victim of crime is to be offered support and protection in all circumstances. However, the reality differs, and the increasing securitisation of migration obscures the underlying social, economic and political 'push' factors that fuel the crime of modern slavery. The next section, therefore, looks at how migration management and the regulation of modern slavery cannot be conceptually and practically seen as separate, but are rather part of the wider efforts to achieve sustainable development.

#### IV. Modern slavery and migration in the context of sustainable development

The United Nations (UN) 2030 Agenda for Sustainable Development (2030 Agenda), comprising 17 goals and 169 targets, aims to overcome

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<sup>46</sup> It must be noted that Australia has denied that the principle of non-refoulement has extra-territorial application or that it applies outside the territorial seas, see *CPCF v. Minister for Immigration and Border Protection* (Judgment) [2015] HCA 1.

<sup>47</sup> See, for instance, the Convention on the Status of Refugees (1951) 189 UNTS 150, Article 33(1).

<sup>48</sup> See, for instance, UNODC, *Global Study...*

<sup>49</sup> See Szablewska, *Human smuggling...*

<sup>50</sup> European Commission, *A Renewed EU Action Plan against Migrant Smuggling (2021-2025)*, 29 September 2021, COM(2021) 591.

inequality, poverty and climate crisis among others. It is considered to be based on three core elements that require harmonisation, that is economic growth, social inclusion and environmental protection.<sup>51</sup> The Sustainable Development Agenda builds on the preceding UN Millennium Development Goals (MDGs) (2000-2015), based on the UN Millennium Declaration,<sup>52</sup> which consisted of eight goals and 21 targets, ranging from reducing extreme poverty and promoting gender equality, to reducing child mortality and ensuring environmental sustainability.<sup>53</sup> As much as MDGs were an important stepping stone in galvanising global commitment to “spare no effort to free our fellow men, women and children from the abject and dehumanizing conditions of extreme poverty”,<sup>54</sup> none of the goals and its targets referred directly to migrants, or migration, or (modern) slavery as issues that required particular attention to achieving the overarching objective.

In contrast, the UN Sustainable Development Goals (SDGs) focus specifically on ending modern slavery in all its forms, albeit forms of modern slavery are defined narrowly focusing predominantly on children (targets 8.7 and 16.2) and women and girls (target 5.2), whereas in some regions, like the Middle East, it is men who are the predominant victims of forced labour.<sup>55</sup> In the context of migration, achieving SDGs requires addressing the key objectives of the Global Compact for Migration.<sup>56</sup> There are ten indicators that are migration-specific, and SDG 10 on reducing inequalities, in particular target 10.7, focuses on facilitating “orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies”. Thus, ‘managing’ migration requires effective collaborative international governance among all countries.

Migrants represent 3.5 per cent of the world population, yet it is estimated that they contribute nearly 10 per cent of the global gross domestic product (GDP).<sup>57</sup> There have been further studies showing a

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<sup>51</sup> See Sustainable Development Agenda, <https://www.un.org/sustainabledevelopment/development-agenda-retired/#:~:text=For%20sustainable%20development%20to%20be,being%20of%20individuals%20and%20societies>.

<sup>52</sup> UN, *United Nations Millennium Declaration* (New York: United Nations, Dept. of Public Information, 2000).

<sup>53</sup> For the final report, see UN, *The Millennium Development Goals Report*, 2015, accessed 23 May 2022, [https://www.un.org/millenniumgoals/2015\\_MDG\\_Report/pdf/MDG%202015%20rev%20\(July%201\).pdf](https://www.un.org/millenniumgoals/2015_MDG_Report/pdf/MDG%202015%20rev%20(July%201).pdf)

<sup>54</sup> UN, *United Nations...*

<sup>55</sup> UNODC, *Global Report of Trafficking in Persons* (Vienna: UNODC, 2020)

<sup>56</sup> See Global Compact for Safe, Orderly and Regular Migration, <https://refugeesmigrants.un.org/migration-compact>

<sup>57</sup> IOM and McKinsey & Company, *More than numbers - How migration data can deliver real-life benefits for migrants and governments* (IOM and McKinsey & Company, 2018)

positive correlation between labour migration and increasing GDP per capita levels and a further improvement in living standards and welfare.<sup>58</sup> Thus, overall, migration is socio-economically beneficial, and the benefits increase with better integration of migrants in the destination countries. However, despite all the evidence and data, anti-immigration sentiment has been rising worldwide. There are manifold reasons for this, including perceived economic and cultural competition, racial/ethnic and religious attitudes, or fear of crime.<sup>59</sup>

Such attitudes are not only not supported by data, but also migration is recognised as a driving force for the 2030 Agenda. Thus, it is not only about fulfilling the promise of “leaving no one behind” but, in a more substantive sense, migration contributes to the SDGs implementation across all goals; or, putting it differently, effective migration governance is key to achieving the SDGs.<sup>60</sup> Migration and development are closely linked,<sup>61</sup> in that development-related factors, whether conflict, climate crisis or labour markets, can and do impact migration drivers and patterns. On the flip side, poorly managed migration has its consequences for development gains. The 2030 Agenda adopts a whole-of-government approach to achieve coordinated policy on migration governance. In practical terms, it requires reaching beyond immigration policies and their implementation and ensuring that migration governance is integrated across the different sectors and agendas. Strengthening coherence between migration and development agendas can not only improve development outcomes but also migration outcomes.<sup>62</sup>

As discussed earlier, the link between migration and modern slavery is also widely recognised.<sup>63</sup> The UK appointed its first Migration and Modern

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<sup>58</sup> Grația Georgiana Noja *et al.* ‘Migrants’ Role in Enhancing the Economic Development of Host Countries: Empirical Evidence from Europe’, *Sustainability* 10, No 3 (2018): 894; Evert-Jan Quak, ‘The effects economic integration of migrants have on the economy of host countries’, Institute of Development Studies, 5 April 2019, accessed 23 May 2022, [https://assets.publishing.service.gov.uk/media/5d41b51e40f0b60a85e75468/571\\_Economic\\_Impacts\\_International\\_Migration\\_Host\\_Countries.pdf](https://assets.publishing.service.gov.uk/media/5d41b51e40f0b60a85e75468/571_Economic_Impacts_International_Migration_Host_Countries.pdf)

<sup>59</sup> See, for example, Anastasia Gorodzeisky and Moshe Semyonov, ‘Unwelcome Immigrants: Sources of Opposition to Different Immigrant Groups Among Europeans’, *Frontiers in Sociology* 4 (2019): 24; Valentino *et al.*, ‘Economic and Cultural Drivers of Immigrant Support Worldwide’, *British Journal of Political Science* 49, No 4 (2017): 1201–1226.

<sup>60</sup> IOM, *Migration and the 2030 Agenda: A Guide for Practitioners* (Geneva: IOM, 2018).

<sup>61</sup> See, for example, UNDP, ‘Despite dangers, majority of irregular migrants from Africa to Europe would still travel: UNDP report’, 21 October 2019, accessed 23 May 2022, <https://www.undp.org/press-releases/despite-dangers-majority-irregular-migrants-africa-europe-would-still-travel-undp>.

<sup>62</sup> See also IOM, *Migration...*

<sup>63</sup> See, for example, Fiona David, Katharine Bryant and Jacqueline Joudo Larsen, *Migrants and their vulnerability to human trafficking, modern slavery and forced labour* (Geneva: IOM, 2019)



Slavery Envoy in 2019, whose aim is to support the government in coordinating its efforts with other countries to tackle modern slavery, which explicitly acknowledges the impact that modern slavery has on migrants. There are multifaceted reasons for the heightened vulnerability of migrants to modern slavery, which include restrictive migration policies that increase irregular migration. Thus, tackling migrant smuggling by increasing securitisation and targeting irregular migrants for their illegal entry is not only ineffective but, in practical terms, facilitates modern slavery. The globalisation of the economy and labour markets, as well as poverty, are the root causes of modern slavery.<sup>64</sup> Thus, aiming to diminish poverty and decrease inequalities, as set out in the sustainable development agenda, requires re-thinking approaches to managing migration, including the irregular type.

In 2019, Europe hosted the largest number of international migrants (82 million).<sup>65</sup> Despite the efforts taken by and resources (including an average budget of €900 million per year)<sup>66</sup> provided to the EU Border and Coast Guard Agency (Frontex), established in 2004,<sup>67</sup> irregular migration to Europe has continued to increase in 2022 (marking a 78 per cent increase from a year before and 23 per cent increase from 2020).<sup>68</sup> Also, more dangerous routes are more frequently utilised now than before, which indicates that the dangers of irregular migration are not a sufficient barrier to those on the move, which is expected when facing acute desperation and insecurity. As climate-induced (irregular) migration will continue to increase, so will the exposure to modern slavery of those escaping the consequences of climate change.<sup>69</sup> It is essential, therefore, that in fulfilling their obligations towards SDGs, states ensure that migrants are considered

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<sup>64</sup> See, for example, Todd Landman and Bernard W. Silverman, 'Globalization and Modern Slavery', *Politics and Governance* 7, No 4 (2019): 275–290; William Avis, *Key Drivers of Modern Slavery*, K4D Helpdesk Report 855 (Brighton: Institute of Development Studies, 2020).

<sup>65</sup> IOM and McKinsey & Company, *More than numbers...*

<sup>66</sup> See also European Court of Auditors, 'Frontex's support to external border management: not sufficiently effective to date', Special Report, 2021, accessed 23 May 2022, [https://www.eca.europa.eu/Lists/ECADocuments/SR21\\_08/SR\\_Frontex\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR21_08/SR_Frontex_EN.pdf).

<sup>67</sup> Council Regulation (EC) No 2007/2004, (26 October 2004), OJ L 349, 25.11.2004, 1.

<sup>68</sup> As reported in Frey Lindsay, 'EU Border Agency Says Irregular Migration Continues to Increase in 2022', *Forbes*, 17 February 2022, accessed 23 May 2022, <https://www.forbes.com/sites/freylindsay/2022/02/17/eu-border-agency-says-irregular-migration-continues-to-increase-in-2022/?sh=35d8893f5b85>.

<sup>69</sup> See, for example, Anti-Slavery International and Institute for Environment and Development, 'Climate-Induced Migration and Modern Slavery: A Toolkit for Policy-Makers', September 2021, accessed 23 May 2022, [https://www.antislavery.org/wp-content/uploads/2021/09/ClimateMigrationReportSep2021\\_low\\_res.pdf](https://www.antislavery.org/wp-content/uploads/2021/09/ClimateMigrationReportSep2021_low_res.pdf).

across development sectors, and migration governance is the key focus of the international community when pursuing inclusive, integrated and sustainable development.

## V. Conclusion

Modern slavery, including in global supply/value chains, has been attracting international attention, with a number of countries introducing or in the process of developing legislative responses to what is a truly global problem. However—despite the various domestic, regional and international efforts—the number of modern slavery victims has been growing, which has been further exacerbated by global shocks, like the COVID-19 pandemic and recent conflicts.

Even though global migration rates are considered to have been steady since the 1990s,<sup>70</sup> the number of undocumented or irregular migrants, as well as forced displacement of people, is on the rise worldwide. Migrant smuggling is often a “stepping stone to human trafficking”,<sup>71</sup> when the person cannot pay the smuggler or is trapped in economic exploitation,<sup>72</sup> and often results in people being sold for forced labour. Therefore, efforts to address modern slavery need to account for irregular migration in its wider socio-economic context. It requires adopting a more comprehensive lens, rather than simply using a national security perspective focusing on border militarisation, and shifting attention onto human security that balances the protection of sovereignty (or state security) with upholding the human rights of all irrespective of their legal status to offer contextually relevant solutions to human mobility.

There is also a bidirectional relationship between migration and sustainable development. Irrespective of the migration context, SDGs targets are universal and can be achieved only with cooperation by the

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<sup>70</sup> See, for example, Jonathan J Azose and Adrian E Raftery 2019, ‘Estimation of emigration, return migration, and transit migration between all pairs of countries’, *Proceedings of the National Academy of Sciences* 116, No 1 (2019):116-122; in the US context, see Katharine M Donato and Blake Sisk, ‘Children’s Migration to the United States from Mexico and Central America: Evidence from the Mexican and Latin American Migration Projects’, *Journal on Migration and Human Security* 3, No 1(2018): 58-79.

<sup>71</sup> UN Security Council (UNSC) 2312 (2016) Res, (6 October 2016), UN Doc S/RES/2312, 12.

<sup>72</sup> Caritas, ‘Trafficking in Human Beings in Conflict and Post-Conflict Situation’, 2015, 6, accessed 23 May 2022, [http://antitrafficking.am/wp-content/uploads/2015/10/2research\\_action\\_trafficking\\_in\\_human\\_beings\\_and\\_conflicts\\_en\\_10\\_juin\\_2015\\_pdf](http://antitrafficking.am/wp-content/uploads/2015/10/2research_action_trafficking_in_human_beings_and_conflicts_en_10_juin_2015_pdf).

different sectors and agencies, as well as with coherent partnerships between all states. Whether in relation to migration management or modern slavery, a more harmonised global approach is needed that would recognise the multi-dimensional nature of migration as well as the complexity of globalised modern slavery. Moreover, shifting the predominant focus from the downstream approaches targeting the individual onto the wider systemic problems, including by making global businesses accountable for directly or indirectly contributing to modern slavery, is instrumental if we are to get any closer to achieving the SDGs. Consequently, policies and approaches aiming to address modern slavery need to take into consideration (irregular) migration across governance sectors as critical for achieving sustainable development as a universal, transformative and integrated aim.

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