Migrant Smuggling by Sea: Tackling Practical Problems by Applying a High-level Inter-agency Approach

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INTRODUCTION

Huge disparities in wealth across the world, the denial of fundamental rights in some countries, and natural disasters have resulted in broad population movements, including by sea. The most famous examples are, without a doubt, the flow of Vietnamese boat people in the late 1970s,¹ and the 2001 incident with the MV *Tampa*, a ship carrying over 400 migrants that caused a dispute between Indonesia and Australia.² But also more recently, as a result of the Arab Spring, maritime migration came into the picture when hundreds of people died in the Mediterranean trying to reach Europe in 2011.³ As a sea journey is often difficult and dangerous, migrants request the help of smugglers to reach their destination.

The first part of this article will deal with the question of why migrant smuggling is regarded as both a maritime safety and a maritime security problem. To deal with this problem, states have taken several initiatives at both the international and regional level to combat smuggling. These initiatives will be dealt with in the second and in the third part of this article. The fourth part will look at some of the problems that may arise in applying these initiatives in practice. Finally, in the last part, some

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suggestions will be made to improve the legal framework by proposing a high-level inter-agency approach.

I. MIGRANT SMUGGLING BY SEA: A SAFETY AND A SECURITY PROBLEM

Seaborne Movements – A Mixed Migration Problem

Nowadays, most maritime movements are so-called ‘mixed’ movements, involving individuals or groups travelling in an irregular manner along similar routes and using similar means of travel, but for different reasons. This means that the people on board have various profiles and needs, as opposed to being primarily refugee outflows. The 1951 Convention relating to the Status of Refugees defines a refugee as someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion. However, among seaborne migrants, there are also people who are economic migrants looking for a better life in a developed country. As a result, states are quite reluctant to permit these persons onto their territory.

In order to prevent migrants from reaching their territory, states tend to take several interception measures at sea. Interception occurs when mandated authorities representing a state prevent embarkation of persons on an international journey, prevent further onward international travel by persons who have commenced their journey, or assert control of vessels where there are reasonable grounds to believe the vessel is transporting persons contrary to international or national maritime law. This can occur in the form of either physical interception or administrative measures. As a result, crossing the ocean becomes more difficult and migrants request the help of smugglers to reach their destination. A recent study by the