



**IMO**  
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# **An Act against the Smuggling of Migrants by Sea, Land, and Air - 2019**

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# EXPLANATORY NOTE

## **I. Introduction - The Problem of Smuggling.**

Human Smuggling is a trans-nationally planned, coordinated and executed crime that is more often perpetrated by organized criminal networks.<sup>1</sup> It is not merely the smugglers who are in search of the lucrative business, but also the smuggled migrants, who give the green light, collaborate and connive in the crime. The impulse to seek new economic opportunities and look for greener pastures, yearnings for individual or familial betterment and in certain circumstances, making a getaway from conflict and persecution become the motivating factor for migrants to take the desperate step of consenting to be smuggled out of the country. The *modus operandi* is by air, sea, and land where the life of the smuggled migrants are put at risk whatever may be the means of transport during the journey.

But Human Smuggling has received increasing global attention due to the recent human disasters at sea that occurred during transportation of illegal migrants. The organized human smugglers operating through transnational networks have chosen rich, developed, countries as their most preferred destinations. The mode of transportation is mostly via fishing vessels, which are incapable of accommodating large numbers of illegal migrants. To maximize profits, the smugglers ignore safety and sanitary aspects of sea transportation. Most of the vessels used in human smuggling are unseaworthy, thereby travelling in them inherently dangerous and often fatal. Like in the case of human trafficking, in human smuggling, sometimes, children and women are loaded against their will. The issues like inhabitable, unseaworthy sea transportation, organized human smuggling networks, compelling women and children taking passage without their willingness have characterized the criminality of maritime migrant smuggling. Also, it requires urgent attention of the international community to create an effective legal framework to administer these problems to prevent maritime disaster related to human smuggling.

International laws are powerful instruments in the battle against human smuggling. The United Nations Convention against Transnational Organized Crime (UNTOC) is the most recent

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<sup>1</sup> Kayle, David, and Rey Koslowski (eds), *Global Human Smuggling- Comparative Perspectives* (The Johns Hopkins University Press, 2011) 33.

convention of international law that has been implemented to counter and prosecute the human smuggling. But this convention supplemented by three protocols. That is;

- To prevent, suppress and punish trafficking in persons, especially women and children (**Trafficking Protocol**);
- Against the smuggling of migrants by sea, land, and air (**Smuggling Protocol**);
- Against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (**Firearms Protocol**).

Thus, this explanatory note seeks to inquire in to and examine the laws related to smuggling of migrants in the context of the provisions in international law. Special attention is given to United Nations Convention against Transnational Organized Crime (UNTOC) 2000 and the Protocol against the Smuggling of Migrants by Sea, Land, and Air, which is one of the supplementary protocols to the United Nations Convention against Transnational Organized Crimes 2000. Smuggling of Migrants is a new concept in international law and policy.<sup>2</sup> Less than two decades ago, the term smuggling of migrants was used informally, often interchangeably with ‘Trafficking of Migrants’ to refer to a range of conduct related to the facilitation of unauthorized entry into a country and sometimes for an unlawful stay.<sup>3</sup>

Deficiencies in international law related to the matters in smuggling were seen as particularly acute and detrimental, as because:

- ❖ There was no agreed definition of smuggling of migrants,
- ❖ No obligation of criminalization,
- ❖ No obligation to extradite/prosecute perpetrators.

As a result of the above deficiencies legal lacuna under international law, it is increasingly perceived as an obstacle to the efforts of the international community to cope in an efficient manner with the phenomenon of smuggling of illegal migrants for criminal purposes.<sup>4</sup>

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<sup>2</sup> Douglas Guilfoyle, ‘The International Legal Frame work for Interception at Sea: The Interface of International Maritime and Criminal Law’(presentation, Faculty of Laws, University) <[http://www.google.com.au/search=The International Legal Frame work for Interception at Sea](http://www.google.com.au/search=The+International+Legal+Frame+work+for+Interception+at+Sea)> Accessed on 28<sup>th</sup> February 2019.

<sup>3</sup> Gallagher and F. David, *The International Law of Migrant Smuggling*, Cambridge: Cambridge University Press, 2014. 56.

<sup>4</sup> “Measures to Combat Alien Smuggling: Report of the Secretary-General”, UN Doc. A/49/350, 30Aug, 1994. A.T –UNODC - Issue Paper- <[https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue Papers /UNODC \\_ Issue \\_Paper \\_in\\_ the \\_ Smuggling \\_of\\_ Migrants \\_Protocol.pdf](https://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue+Papers/UNODC_Issue_Paper_in_the_Smuggling_of_Migrants_Protocol.pdf)> accessed on 25<sup>th</sup> February 2019.

## **II. Protocol against the Smuggling of Migrants by Land, Sea, and Air- ‘The Smuggling Protocol’**

In September 1997, the Austrian Government submitted to the Secretary-General of the United Nations a draft International Convention against the Smuggling of Illegal Migrants as a Transnational Crime and to fill the gaps in international law.<sup>5</sup> Similarly, the Italian Government submitted a draft to International Maritime Organization (IMO) to the codification of an international offence of illicit trafficking and exploitation of illegal migration by sea, and seeking to establish cooperation measures between States through judicial and police assistance<sup>6</sup>. The Italian draft received support from a number of delegations at the IMO but it was generally agreed that the IMO is not the appropriate body to discuss this proposal. This is because the IMO is concerned with maritime safety and the protection of the maritime environment, but this Italian proposal raised political, criminal, economic and social issues that require the involvement as well as the backing of United Nations (UN).

Due to the above mentioned international initiatives and following a recommendation by the commission on crime prevention and criminal justice made to the United Nations General Assembly, by the Resolution 53/11 of 9<sup>th</sup> December 1998. It is established an open-ended intergovernmental Ad Hoc Committee to develop a Convention against Transnational Organized Crime (UNTOC) together with supplemental protocols for certain specific crimes and which the Smuggling of migrants was one. The Ad Hoc committee began its work on 19<sup>th</sup> January 1999 and, after 11 sessions, the draft Protocol against the Smuggling of Migrants by Land, Sea, and Air (The Migrant Smuggling Protocol) was approved by the committee in October 2000 for submission to the General Assembly for adoption.<sup>7</sup>

The Italian and Austrian proposals make up the present text of the Migrant Smuggling Protocol.<sup>8</sup> The General Assembly by its Resolution 55/25 of 15<sup>th</sup> November 2000 adopted the Migrant Smuggling Protocol in Palermo, Italy, on 12 – 15 December 2000 in accordance with UN Resolution 54/129.

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<sup>5</sup> Andree Kirchner and Lorenzo Schiano Di Pepe, ‘International Attempts to conclude a Conventions to Combat Illegal Migration (1998)10 Intl. JRL, 670.

<sup>6</sup> *ibid*, 664-66.

<sup>7</sup> *Travaux Préparatoires* of the Negotiation for the Elaboration of the United Nations Convention against Organized Transnational Crime and the Protocols.(United Nations 2006)

<sup>8</sup> David Mac Clean, *Transnational Organized Crime: A Commentary on the UN Convention and its Protocol* (Oxford University Press. 2007) 451.

In accordance with Article 22 of the Protocol, which states that the Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, the protocol entered in to force on 28<sup>th</sup> January 2004, at the present, 147 States are now a party to the Protocol and Sri Lanka has only signed to the protocol on 13<sup>th</sup> December 2000.<sup>9</sup> Yet, the protocol has never been ratifying by Sri Lanka.

The Migrant Smuggling Protocol regulates an area of international law that had not been addressed by earlier conventions. Moreover, it played a key in addressing a number of fundamental issues like ‘what the smuggling of migrants is’ and ‘whether or not smuggled migrants need to be protected’.<sup>10</sup> Such questions had never been addressed prior to the protocol despite national, regional and international efforts to deal with the smuggling problem and also not only that the smuggling protocol provides a solid platform from which to build effective strategies to combat smuggling of migrants.<sup>11</sup>

Finally, the United Nations (UN) protocol against the smuggling of migrants by Land, Sea, and Air is the foremost international response to a phenomenon that has emerged as one of the most significant political, social, and criminal justice issues in the present context; and it is the first and only international instrument to define and criminalize the smuggling of migrants, foster international co-operation, and protect the right of smuggled migrants. Further, it supplements the Convention against Transnational Organized Crime and is part of a suite of measures to promote co-operation to prevent and combat transnational organized crime more effectively.<sup>12</sup>

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<sup>9</sup> See United Nations, “Treaty Collection” - [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=XVIII-12-b&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=XVIII-12-b&chapter=18&lang=en) Accessed on 25<sup>th</sup> December 2018.

<sup>10</sup> Andreas Scholenhardt, *Migrant Smuggling: Illegal Migration and Organized Crime in Australia and Pacific Region* (Martinus Nijhoff Publisher, 2003) 5.

<sup>11</sup> Andreas Schloenhardt and Jessica E Dale, “Twelve years on: Revisiting the UN Protocol against the Smuggling of Migrants by Land, Sea, and Air” (2012) 67 JPL 129, 153.

<sup>12</sup> Convention Against Transnational Organized Crime, 12<sup>th</sup> December 2000, 2225 U.N.T.S 209 (Entered into force 29<sup>th</sup> September 2003) art.1

### **III. ‘Concerns’ in relation to Ratification of the Smuggling Protocol**

#### **(a). The Protocol only promotes a Western-Centric view**

The most criticism of the smuggling of migrant protocol get is that most of the Non-State parties to the protocol holding a view that the protocol promotes only western-centric view.<sup>13</sup> Also perception that the protocol serves to the developed nations to the exclusion of migrants, many of them refugees and asylum seekers from less developed countries.<sup>14</sup> Further shares the view that ‘the smuggling of migrants’ protocol is an instrument that protects the interest of wealthy destination countries and that it is of much greater concern to these States than it is to source and transit countries like Sri Lanka.<sup>15</sup>

As in the ‘Key Features’ of the smuggling protocol; the number, breadth, and magnitude of obligations imposed by the protocol are significant. As it is not a country or regional-centric; and for the smuggling protocol to be effective and achieve its ambitious purpose, it requires widespread commitment and implementation. Also, the investigation and prosecution will remain ineffective unless the smuggling of migrants is criminalized consistently in all States. If it does not happen, Smuggling will continue to exploit discrepancies and adjust their routes to avoid detection and punishment.<sup>16</sup>

#### **(b). Most of the implications made by the Smuggling Protocol are against the Domestic Law and Policies.**

The other concern in relation to the Smuggling Protocol is that most of the implications made by the protocol are conflicts with domestic laws and policies, such as the principle of non-criminalization of smuggled migrants would have a great impact on national immigration laws, and on States sovereign right to enforce these laws.<sup>17</sup> Also during the negotiation of the Smuggling Protocol related issues, many States expressed their views that the Smuggling

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<sup>13</sup> J. Stumpf, “The Immigration Crisis: Immigrants, Crime and Sovereign Power” *American Law Studies Law Review* (2006), 367.

<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.*

<sup>16</sup> Anne Gallagher, *Routledge Handbook of Transnational Criminal Law* (London: Routledge, 2015), 192.

<sup>17</sup> A.Scholenhardt and C.Craig, ‘Prosecution of People Smugglers in Australia’, *Sydney Law Review* (2016), 49.



Protocol granting immunity to illegal immigrants, especially those who have committed other immigration offences under domestic law.<sup>18</sup>

### **(c). Capacity Concerns related to Smuggling Protocol**

Also another concern in relation to the Smuggling Protocol is linked to the obligation that it provides compensation for damages caused to vessels during search and seizure; and non parties to the smuggling protocol were particularly concerned that it was not clear who could seek compensation, from whom compensation could or should be sought, and how much compensation would have to be provided.<sup>19</sup> Also further they argued that this will create an extra financial burden for the State Parties who ratify the Smuggling Protocol.

A mandatory obligation to protect the rights of smuggled migrant would be too arduous for State Parties and it will be another myth that relates to the Smuggling Protocol.<sup>20</sup> In the Smuggling Protocol, there are inclusions of provisions relating to the protection of the rights of smuggled migrants. While the Smuggling Protocol is clearly not a human rights instrument, human rights elements are evident within the Smuggling Protocols' statement of purpose and in its protection and prevention measures. But this is particularly the case in countries with poor human rights records and countries that have an objection towards international human rights law and they are the one who creates as a myth for refrain from ratifying the Smuggling Protocol.

### **(d). Perception and Relevance of Smuggling Protocol**

Also, another concern that many States reluctant to ratify the smuggling of the migrant protocol is that they think the phenomenon of migrant smuggling lack significance for individual States as well as States does not have pressure and incentive to ratify the Smuggling Protocol.<sup>21</sup> Rather giving incentive(s) to ratify the Smuggling Protocol, it creates many burdens to the State who ratify the protocol; that is ratification of the smuggling of migrants protocol is also not have an option for those States that have not signed The United Nations Convention against

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<sup>18</sup> *Travaux Préparatoires* of the Negotiations for the Elaboration of the United Nations Convention Against Organized Crime and the Protocols Thereto (United Nations,2006) [*Travaux Préparatoires*]

<sup>19</sup> See Note - 18, 52.

<sup>20</sup> A. Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' *Human Rights Quarterly* (2001),1001.

<sup>21</sup> T. Obokata, 'Smuggling of Human Beings from a Human Rights Perspective: Obligations of Non-State and State Actors under International Human Rights Law' , *International Journal of Refugee Law* (2005), 394.

Transnational Organized Crime (UNTOC).<sup>22</sup> But rather as mentioned in the ‘History of the Smuggling Protocol’, this is not an independent treaty. Because the complementary regimes of jurisdiction are established by the critical link between the protocol and its ‘parent’ the Convention against Transnational Organized Crime. Article 37 (2) of the Convention establishes that in order to become a party to the protocol, a State must also be a State party to the convention. The legislative guides for the implementation of the United Nations Convention against Transnational Crime and the Smuggling Protocol, thereto further emphasize that it is no possibility for a State to be subject to any obligation arising from the Smuggling Protocol unless it is also subject to the obligations of the convention.<sup>23</sup> As per the above facts, it shows that the obligation of ratifying the convention is made to the only purpose of it ensures that, in any case, that arises under the protocol to which the States concerned are parties, all of the general provisions of the convention will also be available and applicable and many specific provisions were drafted on that basis.<sup>24</sup>

#### **(e). Lack of Resources and Incapacity to comply with the obligations made by the Smuggling Protocol**

The concern that many States reluctant to sign the smuggling protocol is the lack of resources and institutional incapacity to perform or comply with the necessary obligations made by the Smuggling Protocol.<sup>25</sup> Most of the States that are non party to the Smuggling Protocol presume that ratification of the Smuggling of Migrants Protocol involves considerable direct and indirect cost, such as to the expertise and human resources need to review, adapt, and change existing laws; which may involve long complicated drafting process, parliamentary debates and scrutiny and other elements of law reform processes. Also further they think that substantial costs also stem from those Smuggling Protocol obligations that require technical equipment and know-how, training, border security measures, awareness programs, and the protection and return of smuggled migrants are some of the financial capacity concerned areas that the State may think that they may not have the capacity to implement and enforce many of the Smuggling Protocol provisions.

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<sup>22</sup> *ibid*,397.

<sup>23</sup> Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and Protocol Thereto (United Nations,2004) [Legislative Guides] 330.

<sup>24</sup> *ibid*, 329.

<sup>25</sup> S. Pickering, “Transnational Crime and Refugee Protection”, *Social Justice* (2007), 47.

But as we know that some of these financial costs may be one-off, such as investing in new technology and amending existing law, and they may be an ongoing process such as maintenance of technical equipment, training and retuning smuggled migrants that need some financial contribution from the State. Yet, the Smuggling Protocol makes some concessions for less prosperous States parties by limiting some obligations ‘to the extent possible’ or ‘the available means’; or by adopting non-mandatory language for some provisions.<sup>26</sup>

Furthermore, the United Nations Office on Drugs and Crime (UNODC), the International Organization for Migrants (IOM), and other international agencies provide technical assistance to States, ranging from the creation of model legislation and frameworks for implementation to the training of law enforcement and judicial officials and the facilitation of data collection and information exchange. In addition to these supports, further Article 30 of the Convention against Transnational Organized Crime provides that State parties shall make efforts to enhance international co-operation, including the provision of financial and material assistance to developing States to fight transnational organized crime and suggest the creation of multilateral and bilateral arrangements for assistance.

### **(f). Lack of Clarity and Understanding about Smuggling Protocol**

The most influential factor to the State parties that reluctant to ratify the Smuggling Protocol and reason behind the above-described myths are lack of understanding of the meaning and dimension of the smuggling of migrants, and of the purpose, content, and requirements of the Smuggling of Migrants Protocol.<sup>27</sup> Also, most States are fear that the Smuggling Protocol would limit the ability of States to maintain full sovereign control all matters relating to border control, immigration, and criminal justice. It is true that the Smuggling Protocol is primarily a crime control and law enforcement instrument. The Smuggling Protocol deliberate farming of the smuggling of migrants as a type of organized crime requiring primarily a ‘crime control’ response is what fostered consensus in the first place. But some of the requirements made b the Smuggling Protocol are not mandatory. Also, the Smuggling Protocol only provides guidance on the many complex issues associated with the smuggling of migrants, and the reasons for the Smuggling Protocol taken a broad approach may be justified to avoid any loopholes and gaps in

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<sup>26</sup> Dona Hathaway, “Between Power and Principle: An Integrated Theory of International Law” (2005) 72(2) University of Chicago Law Review, 498.

<sup>27</sup> UNODC, Legislative Guide for the Implementation of the United Nations Convention against Transnational Organised Crime and the Protocols Thereto (Vienna:UN,2004),333.

the definition as well as to allow the inclusion of ‘yet-to-be-conceived’ forms of migrant smuggling.<sup>28</sup>

### **(g). Lack of ‘Political Will’ to ratify the Smuggling Protocol**

In addition to the points already mentioned above, “a lack of political will”<sup>29</sup>, as well as the topic of smuggling migrants, would be considered by the non-State parties to the Smuggling Protocol as an irrelevant in their domestic context is among the main barrier to ratification of the smuggling of migrants’ protocol.<sup>30</sup> As because most of the non-State parties to the Smuggling Protocol may view their irregular migration problem as a negligible and unworthy for give attention and investment. But when this point is taking in to consideration of Sri Lankan perspective, Sri Lanka is a party to the Bali Process, which was introduced in 2002 as a regional approach to combat human smuggling, human trafficking and other related transnational crimes and the most important thing in this process was, it expressed a voluntary commitment of the participating States to within the framework of their international obligations and respective national circumstances, co-operate as a region to combat migrant smuggling and trafficking persons.<sup>31</sup> This initiative may be seen as complementing the goals and efforts of the protocol and further, it may also serve as a tool to encourage Sri Lanka to ratify the Smuggling Protocol and learn from the experience of other State parties. But become a party to the Bali Process cannot be set as a, fulfil the Smuggling Protocol obligations and it is an only a regional initiative. It cannot be taken as a substitute for comprehensive, binding, and enforceable international instruments such as the Smuggling of Migrants Protocol; for this reason, there should be greater efforts should be taken by the Sri Lankan government to ratify the Smuggling of migrant Protocol by rejecting the above-mentioned reasons that most of the Non-State parties think barriers to ratify the Smuggling of Migrants Protocol.

As the key destination countries for Sri Lankans are Australia, Canada, France, Germany, India, Italy, Malaysia, New Zealand, the United Arab Emirates and the United States. While information relating to asylum applications exists, there appears to be limited data involving the

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<sup>28</sup> Andreas Schloenhardt and Ellen Beven, “ToRatify or not to Ratify? Exploring the Barriers to wider Ratification of the Smuggling Protocol” (2011) 9 New Zealand Year Book of International Law 161, 177

<sup>29</sup> David Mac Clean , See N-18, 55

<sup>30</sup> Ibid.

<sup>31</sup> The Bali Process on People Smuggling, Trafficking in persons and related transnational crime, “First Regional Ministerial Conference of People smuggling, Trafficking in persons and Related Transnational Crime” (February 2002) 8 -13.

number of actual irregular migrants, with 2017 data showing up to 2,812 Sri Lankans attempted to enter Canada irregularly, while 6,412 irregular migrants arrived in Australia in 2017.<sup>32</sup>

Also further, Sri Lanka as a country that faced the many challenges with regard to human smuggling must ratify the Smuggling of Migrants Protocol, as it is an important milestone in global efforts to prevent and suppress this crime, and in the protection of the rights of smuggled migrants. It has created an international framework for criminalization and co-operation and not only that the Smuggling Protocol and its extensive explanatory and interpretative materials provide national legislators with a blueprint to combat the Smuggling of Migrants at domestic level, which can be integrated bilaterally, regionally, and multilaterally. As these facts emphasize that, to prevent and combat the smuggling of migrants more effectively and as a country, Sri Lanka must ratify this important treaty and it will enhance the good image of Sri Lanka in the world community.

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<sup>32</sup> Global study on Smuggling of Migrants, 2017, UNODC,(United Nations Publication), 28,100,116&117.

## **IV. The ‘Key Features’ of the Smuggling of Migrants Protocol**

The main purposes of the smuggling of Migrants Protocol are “to prevent and combat the smuggling of migrants, as well as to promote cooperation among States parties to that end, while protecting the rights of smuggled migrants”<sup>33</sup> and to achieve these purposes protocol sets out a comprehensive framework to criminalize migrant smuggling, and enable cross-border cooperation, whilst protecting the rights of smuggled migrants.<sup>34</sup>

Under Article 3(a) of the Protocol defines the term ‘Smuggling of Migrants’ to mean the procurement, in order to obtain, of the legal entry of a person into a State party of which the person is not a national or a permanent resident. Also, Article 6 (1) requires that when a State party is signing the protocol agrees to make the smuggling of migrants and related conduct as a criminal offence. Article 6(1) identifies three offences that must be established in domestic law, including:

- (i).** Smuggling of migrants offence as in Article 6 (1) (a);
- (ii).** a document fraud offence as in Article 6 (1) (b);
- (iii).** an offence of enabling of illegal stay (or harbouring) as in Article 6 (1) (C).

Article 6 (2) is focused on encourages States parties to criminalize attempting, participating, organizing, and directing any of the offences set out in Article 6 (1) (a) to (c). Article 6 (3) creates an obligation to the State, incorporate aggravating circumstances into the offences established pursuant to Article 6 (1). The two aggravations that specifically listed in Article 6 (3) includes circumstances (a) that endanger, or are likely to endanger, the lives or safety of the migrants concerned; or (b) that entail inhuman or degrading treatment, including for exploitation, of such migrants. Also not only that, it is open to State parties to legislate on other aggravating circumstances as they think fit with aligning to the international norms and standards. Article 5 of the Smuggling Protocol stipulates the principle of non-criminalization of smuggled migrants, stating that migrants shall not become liable to criminal prosecution under this protocol for the fact of having been the object of conduct set forth Article 6 of this protocol.

The prevention and suppression of the smuggling of migrants by sea are specifically addressed in Article 7, 8, and 9. Article 7 requires that all States should co-operate to the fullest

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<sup>33</sup> Protocol Against the Smuggling of Migrants by Land, Sea and Air, 12th December 2000, 2241 U.N.T.S 507 (entered in to force 28th January 2004) [Smuggling of Migrants Protocol] art.2.

<sup>34</sup> David Mac Clean - Note - 8, 129.

extent possible to prevent and suppress the smuggling of migrants by sea. Article 8 set out boarding power at sea, it includes requesting permission to board and search the vessel of another State party as well as obligations, including the establishment of an authority to verify the legitimate registration of vessels. Article 9 is a safeguard clause creating a responsibility to protect the vessel and its passengers and to reimburse a vessel damaged during a search.

Also, several Articles in the Smuggling Protocol make provisions for international co-operation. Article 10 encourages State parties to exchange information and Article 13 obliges States to verify the legitimacy of documents at the behest of another State. The Smuggling Protocol encourages States parties to enhance border controls, document security, training of law enforcement and border officials, and the implementation of public information programs.<sup>35</sup> Articles 14 (3) and 15 (3) specify that States shall consider providing technical and financial assistance to other States.

Also under the Smuggling Protocol, for the purpose of protecting the rights of smuggled migrants are reflected in several provisions relating to protection and assistance. Article 4 extends the scope of the protocol to the protection of the rights of persons who have been the object of migrant smuggling. Under Article 9 (1) states that States parties are obliged to ensure the safety and humane treatment of the persons onboard in a suspected smuggling vessel. Article 16 sets out a number of protection and assistance measures that afford smuggled migrants some basic guarantees of protection and aid. Article 19 of the Protocol contains and responsibilities of States and individuals under international law, and to apply the Protocol in a way ‘that is not discriminatory to persons on the ground that they are the object of’ migrant smuggling. Also, the Protocol sets out a framework for receiving States for the repatriation of smuggled migrants.<sup>36</sup>

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<sup>35</sup> The Smuggling of Migrants Protocol, Note 9. Art. 11, 12, 14, 15(1).

<sup>36</sup> The Smuggling of Migrants Protocol, Note 9. Art.18.

## **V. What kind of a Steps should be taken by Sri Lanka, when ratifying the Smuggling of Migrants Protocol**

In international law, a reservation is a formal statement expressing a caveat to the States' acceptance of a treaty, usually purporting to exempt or alter the application of certain provisions of that treaty to that State. When Sri Lanka is ratifying the Smuggling of Migrants Protocol in the near future, the main feature that should be considered by the Sri Lankan government is that, what are the Articles that should be reservation by the Smuggling Protocol; for this the government of Sri Lanka can take into consideration that the previous reservations which are done by the other States who are party to the Smuggling Protocol. A total of twenty-five States have made reservation to the Smuggling Protocol upon ratification and most of the reservations are made under the Article 20 (3) of the Smuggling Protocol to exclude the compulsory jurisdiction of the International Court of Justice (ICJ),<sup>37</sup> and , if the Sri Lankan government do the same reservation to exclude the compulsory jurisdiction of ICJ, should made a reservation to the Article 20 (3), as this reservation does not significantly limit or obscure the application of the Smuggling Protocol to Sri Lanka as a State party to it.

Also, Sri Lanka has signed the Smuggling Protocol in 13<sup>th</sup> December 2000 as the initial State who signs the protocol when it came into force and as a result of this fact, now Sri Lanka can directly ratify this Smuggling Protocol. As because Sri Lanka has already fulfilled the pre-requirement of ratifying the mother convention, that is United Nations Convention against Transnational Organized Crime in 22<sup>nd</sup> September 2006, which is another mandatory pre-requirement to ratify the smuggling protocol. The ratification can be done by the foreign minister or authorized delegated person o behalf of the minister and in this case as it is a UN treaty, the permanent representative to the United Nations from Sri Lanka can ratify the Smuggling Protocol on behalf of the Sri Lankan government by way of depositing a consent instrument with taking in to consideration of the above-mentioned facts.

Further, emphasizing the obligations made under Article 8 (6) of the Smuggling Protocol, Sri Lankan government has to nominate a designated authority to that other State parties to the Protocol can 'request assistance' and 'confirmation of vessels, registered in or fly the flag of Sri

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<sup>37</sup> United Nations Treaty Collection, Chapter XVIII Penal Matters, 12.b Protocol against the Smuggling of Migrants Land, Sea, and Air, supplementing the United Nations Convention Against Transnational Organized Crimes, <<https://treaties.un.org/doc/Publication/MTDSG/Volume%20II/Chapter%20XVIII/XVIII-12-b.en.pdf>> accessed on 25<sup>th</sup> December 2018.



Lanka'; and for the above obligation can be discharged by the following way of a Declaration, when Sri Lanka is ratifying the Smuggling Protocol.

**Notification under Article 8 (6) of the Protocol:**

*“In accordance with article 8, paragraph 6 of the protocol, the government of the Democratic Socialist Republic of Sri Lanka has designate the Ministry of Justice and the Attorney Generals Department as the central authorities for the receipt of request for mutual legal assistance, with the power either to execute them or to transmit them to the competent authorities for execution.*

*In addition to the authorities referred above, the Democratic Socialist Republic of Sri Lanka has designated the Registrar of Ships, Merchant Shipping Division of Ministry of Ports and Shipping, as the authority to receive and response to request for assistance, for confirmation of registry or of the right of a vessel/yachts to fly the Sri Lankan flag and also further the High Seas' Fisheries Unit of Department of Fisheries and Aquatic Resources, as the authority to receive and response to request for assistance, for confirmation of fishing vessels registered in Sri Lanka and for authorization to take appropriate measures.”*

## **VI. Incorporation of ‘Smuggling Protocol’ into Sri Lankan Domestic Law**

Ratification is only a first step in an effective international campaign enhance the activities against the smuggling of migrants, but the most effective and efficient way to combat this newly emerging concept is the realization of the standards in domestic law and administrative practice. While the Smuggling of Migrants Protocol provides a solid foundation on which State parties can build their domestic efforts to criminalize and combat this phenomenon, but the domestication of this ‘standards’ imposed by the protocol is a great challenge to policy-makers and legislatures. As because the way in which States parties adopt the standards set by the Smuggling of Migrants Protocol can mainly depend on the ‘States parties’ views on the international law.<sup>38</sup> To overcome this issue of domesticating the ‘standards’ of the Smuggling Protocol, the extensive interpretative material, ‘Tool Kits’, Model Laws, and other documents developed by the United Nations Office of Drugs and Crime (UNODC) can use by Sri Lanka as guideline to acquire the real meaning and purpose of the Smuggling Protocols’ provisions, when drafting a legislation regarding the Smuggling of Migrants.

### **(a). Has the current legal system of Sri Lanka covering the concept of ‘Smuggling’?**

The United Nations Convention against Transnational Organized Crime (UNTOC) which is signed (13<sup>th</sup> December 2000) and ratified (22<sup>nd</sup> September 2006), while the Protocols under this umbrella Convention which are namely, Trafficking and Smuggling Protocols still need to be ratified by Sri Lanka. But the domestic laws of Sri Lanka has taken some measures on preventing and combating trafficking in persons and steps are taken to include various provisions under the existing law to combat trafficking. As a first step by introducing a separate offence of ‘Trafficking’ by way of an amendment to the penal code in 2006.<sup>39</sup> Further, after become party to the South Asian Association for Regional Co-operation (SAARC) Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002, to create legal provisions to give effect to the convention, the parliament of Sri Lanka has passed the

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<sup>38</sup> Anne Gallagher - Note 16, 323.

<sup>39</sup> Penal Code (amendment) Act No 16 of 2006.

Convention of Preventing and Combating Trafficking in Women and Children for Prostitution Act in 2005. Further, a National Task Force on Human Trafficking has also been set up in partnership with the International Organization for Migration (IOM) to support successful prosecution and protect victims.

Yet, when it comes to the ‘Smuggling’, the key law applicable by the Sri Lankan Courts to cover the crime of smuggling is contained in the Immigration and Emigration Act No. 20 of 1948 as amended. Section 45, 45A and 45C as amended <sup>40</sup>in 1961, 1993, 1998 and 2006 remain the relevant provisions. Also mainly Section 45C as amended <sup>41</sup>in 2006, specifically addressing the concern of facilitating persons to leave Sri Lanka maintains that ‘any person who organizes such activities as described in the section shall be guilty of an offence and convicted to a minimum of 1 year up to a maximum of 5 years. While this is the only provision(s) that capture the essence of smuggling contains in the Immigration and Emigration Act, yet, it is pertinent to note that ‘Smuggling’ has not been defined in the Act; this reason may be one of the points that attributable to the low conviction rate in relation to the Smuggling in Sri Lanka.

As these facts mentioned above confirms that, there is an urgent need to bring about incorporating the Smuggling Protocol, as many elements that are found in the Smuggling Protocol are still not criminalized under Sri Lankan Domestic Law. But some provisions such as ‘offences related to travel and identity documents’ are covered by the amendment of the Immigration and Emigration Act in 2006; but comprehensive law on covering the substantive and procedural aspects as mentioned in the Smuggling Protocol should be implemented by an act, as there are more provisions to cover and some of the provisions conflict with the present existing laws, it cannot be done by way of an amendment to the existing Immigration and Emigration Act. Further, the Immigration and Emigration Act which is presently used by the Courts in a way of interpreting the existing provisions to prosecute the offences related to ‘Smuggling’ is poorly equipped with the victims’ rights and other obligations that are required by the Smuggling Protocol. In order to have a common and broad understanding of ‘Smuggling’ and also to ensure that all forms of the Smuggling are penalized, and the smuggled migrants are adequately protected, the definition under the Smuggling Protocol must be adhered to.

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<sup>40</sup> Immigration and Emigration (amendment) Act No: 68 of 1961, 16 of 1993, 42 of 1998 and 31 of 2006.

<sup>41</sup> Section 3, Immigration and Emigration (amendment) Act No 31 of 2006.

This should be done under one comprehensive law to cover all the obligations imposed by the Smuggling Protocol to a party to it and it must be woven into the existing legal frame of Sri Lanka.

### **(b). Steps that should take when transforming the Smuggling Protocol into Sri Lankan Legal System**

When the Smuggling Protocol is ratified by the Sri Lankan government it does not, therefore, apply directly to the Sri Lankan legal system. Instead, similar to all other international conventions, it relies on implementation/incorporation by the State through its legislation as Sri Lanka is a dualist State. The transformation of a treaty law into domestic legal system is generally initiated through the parliament. However, there are some instances where the relevant minister is empowered by legislation to promulgate relevant regulations by virtue of the powers vested in the minister on behalf of the legislature. But in this case when Sri Lanka ratified the Smuggling Protocol, as it is an international treaty instrument, it can be done only by the parliament by way of enacting a parliamentary Act; and for the domestication of Smuggling Protocol can be achieved as described above, by way of ‘**Separate Act**’ enacting through parliament to cover the mandatory obligations imposed by the Smuggling Protocol.

### **(c). Key Features of the Draft ‘Law against the Smuggling of Migrants by Land, Sea and Air Bill (Act)’**

“Sri Lanka has experienced a significant increase in the number of ‘*unauthorized departures*’, apparently facilitated by criminal groups that were organized and sophisticated enough to exploit as the legislative, policy and law enforcement weaknesses” – *Immigration and Emigration Department Controller General - Mr Nihal Ranasinghe*.<sup>42</sup>

Above statement emphasizes the necessity of a comprehensive law to fight against the migrant smuggling in Sri Lanka and the main aim of this draft Bill (Act) is to fulfil that requirement needed by Sri Lanka in the field of Human Smuggling. Under the definition set out in the Smuggling Protocol, migrant smuggling will occur if the offender engaged in the act

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<sup>42</sup> Daily FT E-Paper – 3rd October 2018 - <<http://www.ft.lk/front-page/New-Immigration-and-Emigration-Act-from-mid-2019/44-663985>> accessed on 25<sup>th</sup> January 2019.

(procuring [facilitating] illegal entry), and did so intentionally for the purpose of obtaining a financial or other material benefit. The Article 6 of the Smuggling Protocol states that State parties to the Protocol are required to effectively criminalize the activities related to migrant smuggling and further required to criminalize the attempts to commit, participating as an accomplice in relation to migrant smuggling and organize or directing persons to commit the migrant smuggling offence. Also, it should subject to the higher penalties in cases with aggravating circumstances, such as where a migrant's life is endangered. Section 2 and 5 of the draft Bill (Act) will serve as the key sections to achieving the above objectives and covering the all the essential elements with regard to offences that are imposed by the Protocol. Further, Section 2 of the draft Bill (Act) include the wording of 'intention to obtain a financial or other material benefit' as an element of the crime of migrant smuggling to explicitly intended to narrow its scope to exclude the activities that directly related to persons who facilitate migration for humanitarian or family reunification reasons or groups such as religious or non-governmental organizations.

Also to enhance the gravity of the offences related to the smuggling under Section 3 of the draft Bill (Act) are labelled as cognisable and non-bail able offences and further under the Section 4 (1) of the draft Bill (Act) the jurisdiction is exclusively given to the Provincial High Courts of Sri Lanka established under Article 154 P of the present Constitution. The prime reason behind giving the jurisdiction to the Provincial High Court is limiting the appeal options that are convicted by the court as under the Section 9 of the High Court of the (Special Provisions) Act, it may allow only one appeal directly to the Supreme Court. Also under Article 4(2) of the draft Bill (Act) ensures and guarantees the extraterritorial jurisdiction or legal ability to exercise authority beyond normal territorial boundaries applies to the migrant smuggling laws. Further, it emphasizes the transnational in nature of the smuggling and enables the State to target smugglers and facilitators who conduct criminal activities across multiple countries.

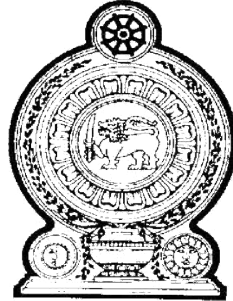
But Article 5 of the Protocol prohibits State parties from prosecuting smuggled migrants themselves for having been smuggled; they were recognized as victims and should therefore not be criminalized. This is achieved by Section 12(2) of the draft Bill (Act) and this Section linked with the Assistance to and Protection of Victims of Crime and Witnesses Act, No 4 of 2015 to achieve the other obligations made by the Protocol. The above facts link to the Protocol which includes a very specific clause relates to the protection of human rights of the smuggled persons.

Further, Section 6 of the draft Bill (Act) guarantees the rights of the non-citizens as they were not covered by the fundamental chapter of the Sri Lankan Constitution.

Under the Protocol State also need strong international crime cooperation laws, including extradition and mutual legal assistance laws. Effective extraditions laws enable law enforcement bodies to bring the offender to the appropriate jurisdiction for prosecution and strong mutual legal assistance laws allow investigators to obtain an exchange of evidence between countries such as bank records, phone records witnesses statements and many more things relates to the proving of the case against the perpetrators. To archive, the above-mentioned objectives under the draft Bill (Act), Section 7 amends the Extradition Law of No of 1977 and includes the offences related to the smuggling of migrants by Land, Sea, and Air and further Sections 8, 9, and 10 of the draft Bill (Act) relates to the extradition and Section 11 of the draft Bill (Act) relates to the mutual assistance.

Finally to fulfil the other requirements and obligations made by the Protocol especially coordinate the domestic and international level to operate the law effectively, the Sections 12(1) and 13 of the draft Bill (Act) grant power to the minister to take all the necessary actions to guarantees the smooth function of the Act.

**(d).The Draft Bill (Act) - ‘Law against the Smuggling of Migrants by Land, Sea and Air’ – 2019**



**PARLIAMENT OF THE  
DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

**LAW AGAINST THE  
SMUGGLING OF MIGRANTS  
BY LAND, SEA, AND AIR,  
ACT, No.     OF 2019**

[Certified on     <sup>th</sup>     , 2019]

*Printed on the Order of Government*

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**AN ACT TO GIVE EFFECT TO THE PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA, AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO**

**WHEREAS** a Protocol against the smuggling of Migrants by Land, Sea, and Air, was adopted at New York by The United Nations (UN) in November, Two Thousand and Entered in to Force in January, Two Thousand and Four: **Preamble.**

**AND WHEREAS** the Government of Sri Lanka became a signatory to the aforesaid Protocol on the Thirteenth day of December, Two Thousand and Ratify the Protocol on the day of , Two Thousand and Nineteenth:

**AND WHEREAS** it is obligatory for the Government of Sri Lanka to make legal provision to give effect to the provisions of the aforesaid Protocol in Sri Lanka:

**NOW THEREFORE** be it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:—

**1.** (1) This Act may be cited as the ‘**Law against the Smuggling of Migrants by Land, Sea, and Air, Act No -- of 2019**’ and shall come into operation on such date as the Minister by Order published in the Gazette certifies as the date on which the Protocol against the Smuggling of Migrants by Land, Sea, and Air is ratified at New York on , 2019 (hereinafter referred to as the “Protocol”), enters into force in respect of Sri Lanka. **Short title and date of operation.**

(2) This Act shall apply to all of smuggling of migrants, whether or not connected with an organized crime. **Scope of Application**



2. (1) Any person who, in Order to obtain ‘directly or indirectly a financial or other material benefit’, intentionally engage to - **Offences of Smuggling.**

(a) ‘**Organize**’ one or more persons to leave or enter into Sri Lanka shall be guilty of an offence under this Act.

in this Sub Section, the expression “**Organize**”, with its grammatical variation includes:

- (i) the recruitment of a person on a promise of securing employment outside or in Sri Lanka;
- (ii) knowingly making false promise of employment or any other benefit in a foreign country or making false representation or disseminating misleading information with the intention of inducing persons to leave or entry into Sri Lanka for or from another foreign country;
- (iii) soliciting pecuniary benefit from persons to whether or not any such benefit was realized;
- (iv) the transportation of persons by land, Sea and Air or any other manner without obtaining valid travel document;
- (v) receiving and harbouring the ‘illegal entry’ persons whether in Sri Lanka or in a foreign country, who is not a national or permanent resident of the Sri Lanka.

(2) Any person, who in order to obtain ‘directly or indirectly a financial or other material benefit’—

- (a) keeps, maintains or manages ;
- (b) knowingly finances or takes part in the financing of ; or
- (c) knowingly lets or rents,

a Vessel, Vehicle or any other means of transportation use to transport person(s) by Land, Sea, and Air or building or other place or any part thereof for the purpose of Smuggling or enabling of illegal stay (or harbouring) or any matter connected thereto, shall be guilty of an offence under this Act.

(3) Any person, who in order to obtain ‘directly or indirectly a financial or other material benefit’, intentionally -

- (a) attempts to commit ;
- (b) aids or abets in the commission of ;
- (c) conspires to commit,

an offence under subsection (1) and (2) shall be guilty of an offence under this Act.

(4) (a) Any person who is guilty of an offence under subsections (1), (2) or (3) of this section shall be punished with imprisonment of either description for a period not less than three years and not exceeding ten years or be liable to a fine.

(b) The Court may recover compensation to be paid to the victim by way of a fine imposed under paragraph (a), taking into consideration the nature of the offence. A further term of imprisonment which may extend to five years may be imposed in the case of a failure to pay compensation.

(c). In case the offence is committed on a subsequent occasion, the offender shall be punished with twice the punishment and fine as is specified in respect of the offence.

(5). In this section “abet” and “conspiracy” shall have the same meaning as in sections 100, 101 and 113A respectively, of the Penal Code.

**3.** An offence under this Act shall be a cognisable and non-bailable offence, within the meaning, and for the purpose, of the Code of Criminal Procedure Act, No. 15 of 1979.

**Offences under  
this Act to be  
Cognisable &  
Non-Bailable.**

4. (1) The High Court of Sri Lanka Holden in each and every Province, established by Article 154P of the Constitution called ‘**Provincial High Court**’ shall, notwithstanding anything in any other law, have exclusive jurisdiction to hear, try and punish the offences under this Act.

**Jurisdiction to  
try offences  
under this Act.**

(2) Where an act or part of an act constituting an offence under this Act is committed outside ‘Sri Lankan territory’, the Provincial High Court referred to in subsection (1) shall have jurisdiction to try such offence as if it were committed within Sri Lankan territory, if —

- (a) the person who committed such act is present in Sri Lanka ;
- (b) such act is committed by a citizen of Sri Lanka or by a stateless person who has his habitual residence in Sri Lanka ; or
- (c) the person in relation to whom the offence is alleged to have been committed is a citizen of Sri Lanka.

5. Where an offence under subsections (1), (2) and (3) of section 2 is committed—

**Aggravating  
Circumstances**

- (1) by a person (hereinafter referred to as an “offender”), who—
- (a). is a member of, or is involved in the activities of, an organized criminal group which is involved in the smuggling of women and children;
  - (b). is involved in other international organized criminal activities;
  - (c). has inflicted direct or indirect violence or coercion in the commission of the offence;
  - (d). is holding public office and by virtue thereof is misusing fully the powers and authorities of that office;

(e). is involved in victimization or Smuggling of vulnerable and dependent person(s) such as child or pregnant women; and

(f). is a previously convicted person particularly of similar offences ; or

- (2) in a custodial institution or in an educational institution or social facility or in their immediate vicinity or in other places to which children and students visit for educational, sports, social and cultural activities,

such facts shall be taken into account by the Provincial High Court in exercising its jurisdiction over the offences referred to in subsections (1), (2) and (3) of section 2 having regard to the grave nature of the offences committed.

**Rights of certain persons arrested for the offences made under this Act.**

6. Where a person who is not a citizen of Sri Lanka is arrested for an offence under this Act, such person shall be entitled—

- (a) to communicate without delay, with the nearest appropriate representative, of the State of which he is a national or which is otherwise entitled to protect his rights, or if he is stateless person, with the nearest appropriate representative of the state in the territory of which he was habitually resident ; and

- (b) to be visited by a representative of that State.

**Amendment to the Extradition Law No. 8 of 1977.**

7. The Extradition Law No. 8 of 1977 is hereby amended by the insertion immediately before Part B of the Schedule to that Law, of the following item:—

- “(48) An offence covered by the Law against the Smuggling of Migrants by Land, Sea, and Air Act, No of 2019”.

8. Where there is an extradition arrangement made by the Government of Sri Lanka with any Protocol State in force on the date on which this Act comes into operation, such arrangement shall be deemed, for the purposes of the Extradition Law, No. 8 of 1977, to include provision for extradition in respect of the offences specified in the Schedule “I” to this Act.

**Existing extradition arrangements with Protocol States deemed to provide for offences in the Schedule.**

9. Where there is no extradition arrangement made by the Government of Sri Lanka with any Protocol State the Minister may, by Order published in the Gazette, treat the Protocol, for the purposes of the Extradition Law, No. 8 of 1977, as an extradition arrangement made by the Government of Sri Lanka with that Protocol State, providing for extradition in respect of the offences specified in the Schedule “I” to this Act.

**Minister may treat protocol as an extradition arrangement between Sri Lanka and certain protocol States, in respect of offences in the Schedule.**

10. Where a request is made to the Government of Sri Lanka by or on behalf of the Government of a Protocol State for the extradition of any person accused or convicted of an offence described in the Schedule “I” to this Act, the Minister shall, on behalf of the Government of Sri Lanka forthwith notify the Government of the requesting State of the measures that Government of Sri Lanka has taken, or proposes to take, for the prosecution or extradition of that person for that offence.

**Duty of Minister to notify requesting State of measures taken against persons for whose extradition a request is made.**

11. (1) The provisions of the Mutual Assistance in Criminal Matters Act, No. 25 of 2002 shall, wherever it is necessary for the investigation and prosecution of an offence under section 2 of this Act, be applicable in respect of the providing of assistance as between the Government of Sri Lanka and other States who are either Commonwealth countries specified by the Minister by Order under section 2 of the aforesaid Act or Non-Commonwealth countries with which the Government of Sri Lanka has entered into an agreement in terms of the aforesaid Act.

**Assistance to Protocol States.**

(2) In the case of a country which is neither a Commonwealth country specified by the Minister by Order under section 2 of the aforesaid Act nor a Non-Commonwealth country with which the Government of Sri Lanka entered into an agreement in terms of the aforesaid Act, then it shall be the duty of the Government to afford all such assistance to, and may through the Minister request all such assistance from, a protocol country, as may be necessary for the investigation and prosecution of an offence under section 2, to the extent required for the discharge of its obligations under the Smuggling Protocol.

(3) The grant of assistance to a Protocol State may be made subject to such terms and conditions as the Minister thinks fit.

**Minister to  
issue  
directions.**

**12.** (1) The Minister may from time to time issue such general or special directions as are necessary for the implementation of the principles and provisions of the Protocol as are embodied in this Act.

(2) The Minister shall, where necessary, issue such directions as may be necessary to provide the victim(s) of Smuggling with accommodation and shelter and other facilities where necessary in the institutions established under any written law, specially under Assistance to and Protection of Victims of Crime and Witnesses Act, No 4 of 2015 for such purpose.

**Minister may  
take additional  
measures to  
combat  
smuggling.**

**13.** The Minister shall take such measures and from time to time issue such directions or guidelines as are necessary—

- (a) to create awareness among the law enforcement agencies and the judiciary of the offences under the Protocol;
- (b) to appoint such officers to any task force that may be established for the purpose of implementation of the provisions of this Act;

- (c) to share information in respect of the sources involved in smuggling and their *modus operandi* through the different modes of travel. (Information in this paragraph shall include the specific details recorded in the course of investigation) ;
- (d) to take necessary measures for the purpose of monitoring the activities of the institutions involved in foreign employment to prevent women and children being trafficked in the guise of being provided employment ;
- (e) to promote awareness by way of media exposure or other measures to publicize the problem of smuggling and its underlying causes including the projection of negative images relate to smuggling;
- (f) to take such other measures to focus on the prevention and development of efforts being taken in areas known to be source areas for smuggling;
- (g) to take steps to repatriate the victims of cross border smuggling, and the provision of legal advice and health care where necessary;
- (h) to establish on its own or with the assistance of non-governmental organizations such places or institutions of shelter and rehabilitation for the victims of smuggling; and
- (i) to make every Endeavour to provide the victims with counselling and job training.

**14.** In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

**Sinhala text to prevail in case of inconsistency.**

15. In this Act, unless the context otherwise requires -

**Interpretation.**

“**Protocol**” means Protocol against the Smuggling of migrants Land, Sea and Air (Smuggling Protocol) supplementing to the United Nations Convention against Transnational Organized Crime (UNTOC).

“**Financial and Other Material Benefit**” means it shall include any type of financial or non-financial inducement, payment, bribe, reward, advantage, privilege or service (including sexual or other service)

“**Child**” means a person who has not attained the age of eighteen years;

“**Vessel**” means any type of water craft, including non-displacement craft and seaplanes, used or capable of being used as a means of transportation on water, except a warship, naval auxiliary or other vessel owned or operated by government and used, for the time being, only on government non commercial service.

“**Sri Lankan Territory**” means land territory, territorial waters as determined by the Maritime Zones Law, No 22 of 1976 and Vessel or Air Craft registered in Sri Lanka or Vessel or Air Craft that flying the flag of Sri Lanka.

“**Smuggling**” means all conduct criminalized under Section 2 of this Act.

“**Illegal Entry**” means crossing border without complying with necessary requirements for legal entry in to state;

“**Repatriation**” means return to the country of origin of the persons subjected to smuggling across international frontiers;

“**Victim of Smuggling**” means any person who has been object of conduct criminalized under Section 2 of this Act, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted.



**SCHEDULE - I**

**(Sections 8, 9, and 10)**

- (a) Keeping, maintaining or managing of any vessel, vehicle or any other means of transportation use to transport or building or other place or part thereof to be used for the purpose of smuggling people;
  - (b) Knowingly finances the use of any vessel, vehicle or any other means of transportation use to transport or building or other place or part thereof to be used for the purpose of smuggling people;
  - (c) Taking part in the financing of any vessel, vehicle or any other means of transportation use to transport or building or other place or part thereof to be used for the purpose of smuggling people;
  - (d) Knowingly letting or renting of any vessel, vehicle or any other means of transportation use to transport or building or other place or part thereof to be used for the purpose of smuggling people;
  - (e) Attempt to commit any of the offences set out in paragraphs (a) to (d);
  - (f) Aiding or abetting the commission of, any of the offences set out in paragraphs (a) to (d);
  - (g) Conspiring to commit any of the offences set out in paragraphs (a) to (d).
-