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REVIEW

TRAFFICKING IN AND SMUGGLING OF HUMAN BEINGS - LINKAGES TO ORGANIZED CRIME – INTERNATIONAL LEGAL MEASURES

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SUMMARY

This presentation, given at the occasion of recent Odysseus seminar for the Republic of Macedonia, is treating a phenomenon of irregular migration by lieu of trafficking in and smuggling of people and its linkages to Organized Crime, enumerating some of the core International legal instruments to combat, prevent, reduce or/and criminalize the offences connected to it. The given presentation is outlined in the following (sub)chapters: 1. Organized Crime in general, 2. Multilateral efforts in fighting the Organized crime, 3. Defining the Organized crime, 4. Trafficking in/Smuggling of persons on the agenda of Organized crime, 5. The distinction between Smuggling of and Trafficking in persons, 6. Linkages and interdependencies, 7. Nature of the business of Trafficking in and Smuggling of persons, 8. New tendencies, 9. Structures of Criminal rings, 10. Diversification and sophistication, 11. Going Trans-continental.

The aim of this presentation is to put more lights on serious linkages between the Organized Crime rings and the irregular movements of people, especially in Europe.

Additionally, this presentation gives a short overview of international fora's dealing with a problem as well as a relevant list of international legal instruments, especially the forthcoming UN (Palermo) Convention on Organized Crime.

INTRODUCTORY REMARKS

This paper is a part of ICMPD (International Centre for Migration Policy Development) in a context of EU Odysseus Project. ICMPD was created in Vienna in 1973 by the Governments of Austria and Switzerland. This inter-governmental organisation now enjoys the support of more than 20 Governments and has diplomatic status through an agreement signed in 1997. The Director of ICMPD is Jonas Widgren. ICMPD concentrates on pan-European migration co-operation and on long-term strategies to meet future immigration challenges.

EU Odysseus Projects are launched by EU and they treat different subject in the EU Candidate countries, mostly in form of seminars for high-level executives of the respective candidate coun-

tries: ICMPD run EU Odysseus project for Western Balkans (Croatia and Macedonia) targeted the most so-called border management issues (such as: visa, asylum, irregular moves, readmission, border-guarding, co-operation between customs and border guards etc.). As both Croatia and Macedonia are about to sign SAA agreements with EU these days, which is a step closer to become an EU candidate country.

1. ORGANIZED CRIME IN GENERAL

Although being well present in Western Europe over decades, the issue of Organized Crime attracted very little attention at the political and economic level in Europe. Additionally, the radical changes in CEE/SEE countries of the late '80s implied growing possibilities for Organized crime to

carry out transfrontier operations all through the Europe. As a consequence, the criminal markets became more mobile, flexible, transnational and Trans-continental, highly accumulative and aggressive.

2. MULTILATERAL EFFORTS IN FIGHTING THE ORGANIZED CRIME

Activities on a supranational and intergovernmental level to combat Organized crime have been existing actually since 1923 (Interpol). Present International FORAs trying to combat transnational Organized Crime and to improve Criminal Justice are:

European Union/Commission, EUROPOL, Council of Europe; and the global/universal ones: Interpol – ICPO and UN ODCCP (CICP and DCP).

European Union

Before the Maastricht Treaty, there was no specific EU framework for dealing with matters related to Organized crime (only the informal police co-operation between Member States, initiated already in mid '70s, was gradually expanded to deal also with Organized crime – among others in the context of the TREVI group).

The Maastricht Treaty and its Third Pillar made specific provisions in the field of Justice and Home Affairs, leading to the establishment of a formal co-operation structure for Customs and Police matters, as well as for criminal and judicial issues. Within the framework of this structure, working groups on police co-operation, drugs and Organized crime, terrorism and judicial co-operation were established. Since the Maastricht Treaty, the European Union has issued several legal instruments relating to the fight against Organized crime (such as: the Action Plan to combat Organized crime with its thirty recommendations, April 1997, including the exchange and training – Falcon Program).

Pre-accession Pact on Organized crime between the EU Member States and the EU candidate countries was approved on 28 May 1998. The main purpose of this Pact is to develop a joint annual strategy to identify the most significant measures against Organized crime (including a two-way flow of information, the exchange of liaison officers, joint investigative activities and special operations carried out with Europol's support).

Europol

The Maastricht Treaty and other EU regulations opened the space for a wider Police co-operation in the field of combating (the International) Organized crime.

EDU (European Drug Unit), a first step towards the establishment of Europol, has been set up by the decision of the European Council in 1993. EDU was mandated to cover: (i) illicit drugs trafficking; (ii) immigration networking; (iii) theft-vehicle trafficking, and finally in 1996, EDU got an additional mandate to cover (iv) the Trafficking in persons. The Europol Convention entered into force on 1 October 1998, mandating this agency to follow illegal/illicit trafficking in nuclear and radioactive substances, persons, vehicles and drugs, as well as to it related money laundering. Since January 1999 on, Europol is additionally charged to cover terrorism and child pornography (eventually through SIRENE system).

Council of Europe

Council of Europe, as a cross-European fora, has its own Inter-governmental Work program against crime that is channeled through the European Committee on Crime Problems (CDPC). Recently it strengthened the co-operation between Member States in combating corruption, its links with Organized crime and Money laundering, and the trafficking in illicit drugs and smuggling of medical drugs (including all sort of exploitation and child pornography).

Interpol – ICPO

Interpol enjoys a membership of 178 countries and a world-wide telecommunication network which links each member's National Crime Bureau (NCB) by I-mail (intra-mail: closed telecom system), and gives automated access to a centralized data base (and the basic back-ground information) on International Crime and Criminal gangs. The NCBs are (as an exchange mechanism) a key element in the services Interpol provides to its member countries. The NCB serves as a link between law enforcement agencies of one country and the law enforcement agencies of other member countries.

The growth and threat of criminal organizations has been discussed in various resolutions adopted by the Interpol General Assembly sessions during the '70s and '80s. By the Resolution of the Interpol General Assembly in 1987, a working group on Organized crime was created in 1988. This resolution noted that "...Organized crime does not limit itself to one form of criminal activity".

As a result of same resolution, Interpol later created the Organized Crime Branch at the General Secretariat in 1989. A subsequent Resolution adopted at the 1993 General Assembly further emphasized the need for international co-operation in combating the Organized crime, by recommending that "the ICPO-Interpol should continue to encourage Police efforts and to intensify co-operation be-

tween countries and their police services, ...seeking to improve the information that is exchanged between countries, and the analysis of that information, and to promote participation by all countries in the structure created within the ICPO-Interpol to deal with this subject." The long-term aim of the Organized Crime Branch was to create an extensive and comprehensive data base of Organized criminal enterprises and persons who are engaged in continued, illegal activity in order to generate (illicit) profits.

The Organized Crime Branch realized that Organized crime groups are increasingly active in alien smuggling and trafficking in human beings. Therefore, in 1996, Project 'Marco Polo' was initiated to produce a study on the routes, modus operandi and Organized crime groups involved in irregular migrations from any country to Western Europe.

The Marco Polo study, published in 1997, clearly showed that the largest number of non-European illegal immigrants coming to Western Europe between 1992 and 1997 had originated from either Iraq, Sri Lanka, Pakistan, India, or one of the African countries (such as Nigeria, Rwanda or Somalia). Several routes utilized in the Smuggling of Chinese nationals to Western Europe were also noted in the Marco Polo study, etc.

The Organized Crime Branch is currently collecting and analyzing several other, but equally important cases of illegal immigration and Trafficking in human beings. Upon the evaluation, Interpol intends to further by sending its specialized officers and analysts to assist local Police units during the ongoing investigations (which are of relevance for an international level).

Current intention of Interpol is to provide its member countries with better insights over the linkage between Organized crime groups, on one hand, and the Illegal immigration and Trafficking in human beings, on the other hand (description of groups, their membership, ordinary routes, methods and means of transportation, location of safe houses, identity of escorts, suppliers of forged documents, as well as visa fraud methods). Special emphasis will be put on the collection and reporting of information related to the post-smuggling/trafficking networking of Organized crime groups (involving trafficked persons into activities such as: forced labor, organized begging, pick-pocketing, prostitution, pornography, etc.)

United Nations

The United Nations and its Vienna-based Office for Drug Control and Crime Prevention – ODCCP; including the Drug Control Program – UNDCP, and the Centre for International Crime Prevention and Criminal Justice – CICP¹, play a significant global role in combating Organized crime and the Criminal Justice strengthening. As a result of the recent restructuring of the work of the United Nations Office in Vienna, a new Undersecretary-General was appointed (and the new Acting Director of CICP).

A first important step with regard to the relevant United Nations activities was the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which contains provisions requiring the development of international co-operation in the fields of extradition, asset forfeiture, mutual legal assistance, co-operation among the law enforcement agencies of Member States, control of precursors and essential chemicals and crop eradication.

In order to better address the problem of the internationalization and sophistication of criminal groups, UN Member States adopted the Naples Political Declaration and the Global Action Plan against Organized Transnational Crime (at the World Ministerial Conference on Organized Transnational Crime held in Naples in 1994). The Naples Action Plan lays emphasis on member states' national combating capacities as well as on international cooperation against Transnational Organized crime and its effective prevention.

About the same (deliberations in form of) recommendations have been adopted at the 9th UN Congress in Cairo in 1995 as well as at the 10th UN Congress on the Prevention of Crime and the Treatment of Offenders held in Vienna, in April this year (including the Vienna Declaration on Crime and Justice as the biggest outcome of the Congress that was chaired by the South Africa's Justice Minister, Mr. P.M. Maduna). The 10th UN Congress, that gathered over 1,000 delegates and experts from all around the world, in its Vienna Declaration also recorded that: "...there are growing serious linkages between Terrorism and Organized Crime as well as dangerous similarities between two of them (such as: money-laundering; trafficking/smuggling of fire-arms, human beings; kidnapping; different sorts of plundering of property, etc.)

Moreover, the UN CICP was requested (by the resolution of the UN GA 53/111, as of 09 XII

1 TPB - A special division "Terrorism Prevention Branch" is attached to the CICP/ODCCP UN Vienna Office.

1998) to further in its tasks by preparing and conducting an Open-ended Intergovernmental Ad-Hoc Committee(s) on Elaboration of a comprehensive International Convention against Transnational Organized Crime and three additional instruments, to which Poland made a first draft in 1998. Between January 1999 – end of July 2000, as many as 10 Ad Hoc meetings (two-week duration each) were held in Vienna, with an average participation of some 140 delegations of states and organizations.

Thus, the final text of Convention has been just verified on the closing day of the 10th Session of Ad Hoc Committee (its 177th meeting), on 28th of July 2000².

Additional instruments include: (i) Protocol to prevent, suppress and punish Trafficking in persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized crime (to which Argentina and USA took the initiative); (ii) Protocol against the Smuggling of migrants by Land, Air and Sea, supplementing the same Convention (and to which Austria and Italy took the initiative); and finally (iii) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components, and Ammunition supplementing the same Convention. Right now in Vienna, there is an ongoing 11th session of the Ad Hoc Committee (October 02 – 27). It is expected that all three additional International legal instruments are finalized (including the Concordance among the three protocols and with the Convention) by the October's session end.

The High-level Political Signing conference is scheduled for December 11–15 (UN GA Res. 54/129), this year in Palermo, following the September's Millenium Assembly Convention approval. It is expected that some 40 to 50 countries will

sign the Convention (and eventually protocols that are finalized by that time, throughout the 11th Ad Hoc Session to be held in Vienna from October 02 – 27, 2000) in the first round, at Palermo meeting.

The next instrument to be on agenda of CICP and to be elaborated by the next Ad Hoc Committee will be an instrument on Anti-corruption (prior or parallel with the Expert group on Explosives), as stipulated by the resolution of the UN GA 54/128.

ICMPD, Origins of the Budapest Process and the 1997 Prague Ministerial Conference

A. The Vienna Ministerial Conference

The initiative to launch the Vienna Process was taken by the Austrian Ministry of Foreign Affairs already by late '80s. The Ministers of 35 countries, along with several international organizations, gathered at the Ministerial Conference (Interior and/or Justice) on the 'Movements of People from Central and Eastern European Countries' (January 1991), with the Council of Europe as co-sponsor. Following the Conference, between 1991-94, as many as twenty Working group meetings were held on various topics. The Process itself was highly instrumental and brought together officials from many European states, discussing the policy issues such as: free movement of people, Asylum-policy and Burden-sharing. Following the EU-countries' initiative, parts of the Vienna Process were gradually incorporated in the regular structures of the Council of Europe by 1994, while other issues are now dealt with under the Budapest Process.

B. The Berlin Ministerial Conference

The beginning of the Budapest Process was paved during the Ministerial Conference in Berlin (October 1991), hosted by the German Federal

- 2 The issues covered by this (Palermo) Convention, of which most for the first time will be covered globally, are as follows:
- (i) Statement of purpose; (ii) Use of terms; (iii) Scope of (the Convention's) application;
 - (iv) Protection of sovereignty; (v) Criminalization of participation in an Organized Crime Group;
 - (vi) Criminalization of the Laundering of proceeds of crime;
 - (vii) Measures to combat Money-laundering;
 - (viii) Criminalization of corruption; (ix) Measures against corruption;
 - (x) Liability of Legal persons;
 - (xi) Prosecution, adjudication and sanctions; (xii) Confiscation and Seizure;
 - (xiii) Intl. co-operation for purpose of confiscation;
 - (xiv) Disposal of confiscated proceeds of crime or property;
 - (xv) Jurisdiction; (xvi) Extradition (- a lot of attention given)
 - (xvii) Transfer of sentenced person; (- a lot of attention given)
 - (xviii) Mutual legal assistance; (- a lot of attention given)
 - (xix) Joint investigation and the special investigative techniques;
 - (xx) Transfer of criminal proceedings; (xxi) Establishment of criminal record;
 - (xxii) Criminalization of obstruction of justice; (xxiii) Protection of witnesses and victims;
 - (xxiv) Measures to enhance co-operation with legal enforcement authorities;
 - (xxv) Collection, exchange and analysis of information on the nature of Organized Crime;
 - (xxvi) Training and technical assistance;
 - (xxvii) Other measures: economic development and technical assistance;
 - (xxviii) Prevention;
 - (xxix) Conference of the Parties to the Convention; (xxx) Implementation of Convention;
 - (xxxi) Relation with Protocols; (xxxii) Final Provisions;
- And finally: Travaux Préparatoires (Interpretative Notes).

Ministry of Interior. The German Federal Minister of Interior invited all his counterparts of the EC member-states, Switzerland, as well as of 13 CEE/SEE states, to discuss 'measures for checking illegal immigration from and through Central and Eastern Europe'. The final document, which was later adopted, recognized the common responsibility of all participating states to take decisive actions against illegal migratory movements .

Among other matters, the Ministers stated that the participating states should:

1. Reinforce the fight against clandestine immigration networks with a common tactical concept, tackle the problem of unauthorized employment of illegal immigrants by exchanging relevant information, especially on smuggling routes used and the forging of documents and would create the legal conditions for the transfer of personal data;
2. Effect thorough controls at road and rail borders and at air and seaports, (which) would develop effective procedures to identify and forestall illegal entries and obtain assurances concerning a traveler's destination and conditions of his stay;
3. Intensify frontier surveillance between Border-crossing points by deploying mobile forces;
4. Fulfil the obligation arising from the international principle of good neighborly relations to readmit persons who have left their country of origin and illegally entered another country;
5. Conclude bilateral or multilateral Readmission agreements and arrangements on the unhindered transit of persons obliged to leave a given country;
6. Provide mutual support in developing border-securing infrastructure, in particular as regards the equipment and training of frontier protection forces;
7. Explore possibilities to define arrangements and criteria for the compensation of financial disequilibria arising from deportation and repatriation measures.

Further on, the Ministers called upon the appropriate national agencies to harmonize Visa policies in order to contribute to a more effective reduction of the immigration pressure.

A working group under the chairmanship of Austria that included Hungary and Italy as well, became responsible for furthering the action in the framework of what was named the Berlin Process. Since then, several Follow-up meetings were held on varied issues in different European countries.

C. The Budapest Ministerial Conference

As the Berlin Follow-up, the Government of Hungary organized a new Ministerial Conference (February 1993). The Budapest Conference 'To

Prevent Uncontrolled Migration' was attended by the Ministers or their representatives (Interior or/and Justice) of almost all European States. Additionally, the Conference was attended by observer delegations representing US and Canada as well as the European Commission, the Council of Europe, UNHCR and IOM.

The Ministers adopted a final document aimed at reinforcing the co-operation between participating states in combating the illegal migration and Trafficking in aliens. Further on, the Ministers noted that "illegal migration constitutes a threat to Public security, which promotes criminality and clandestine employment". By identifying certain basic areas for the further necessary co-operation, the Ministers issued a total of 32 specific recommendations relating to: (i) Legal harmonization (notably the criminalization of the offence of Trafficking in national laws as well as mutual assistance between states in relation to the criminal matters); (ii) the Information exchange within and between states on illegal migration; (iii) the establishment of specialized national Police units; (iv) the improvement of related Border-control operations; (v) the forthcoming Readmission agreements between states; (vi) the introduction of carrier sanctions (by assisting airliners in the preparation and implementation of appropriate measures to prevent the transportation of inadequately documented passengers). The Ministers emphasized that the CEE/SEE states would require rather soon an appropriate assistance to implement the Ministerial recommendations.

Adopted 32 recommendations also cover a variety of sub-items and basically reflect the status of measures taken nationally and multilaterally between two Ministerials (Berlin and Budapest).

Finally, in order to successfully administer the Conference recommendations in the Follow-up period, the Steering group has been established. It was agreed that the members of the Steering group become: the EC, Schengen and EFTA Presidencies along with a four other presented states. This newly created Steering group was named: the Budapest Group.

D. Budapest Group meetings

The *first* statutory meeting (Budapest, December 1993) marked the establishment of the Senior Officials level Budapest Group, as an informal consultative body to monitor the implementation of the Budapest Ministerial Conference recommendations.

Three main tasks in the field of combating uncontrolled migration were recognized which the Budapest Group should carry out. Consequently, the participants decided:

1. To pursue the implementation of the Budapest Ministerial conference recommendations, and to elaborate for this purpose concrete projects;
2. To promote, by priority, the conclusion of new multilateral or bilateral Readmission agreements among the participating countries or/and to improve the existing ones;
3. To explore the possibilities of providing financial and/or technical assistance to countries having difficulties in the implementation of certain recommendations.

The participants agreed that as a first step, the Budapest Group should concentrate on the following recommendations: (i) Recommendation No. 1 (criminalization of Smuggling of illegal migrants); (ii) Recommendation No. 4 (Information exchange on illegal migration); (iii) Recommendation No. 6 (Readmission agreements); and (iv) Recommendation No. 8 (obligation of transport operators to prevent illegal migration).

Although the Ministerial decided that the Budapest Group should be composed of eight entities (Hungary - Chair, the EU Presidency, the EFTA Presidency, the Schengen Group Presidency, Croatia, Czech Republic, Poland and Turkey), however, the Group's Statutory meeting extended the membership to all participating States. This very decision made up the Budapest Group to become (the only really living) a pan-European forum.

The *second* meeting of the Group (held in Prague, September 1994) was attended by the Senior officials of 31 governments and seven international organizations. While preparing this meeting, the Hungarian Chair had carried out a survey requesting the participating States to indicate measures taken to implement the recommendations of the Ministerial Conference. Moreover, an Expert Group³ was established to elaborate further measures and to research existing ones, as well as to make recommendations for future co-operation. The Prague meeting mandated the Expert Group to analyze areas of the special interest for its member states.

Responding to its mandate, the Expert Group soon selected five themes for special examination and speeding up in their implementation:

1. International criminalization of Trafficking in persons along with an equalization and harmonization of the penalties for employers of illegal migrants;
2. Information exchange, Readmission agreements and instruments of similar purpose;
3. Information exchange in the field of illegal mi-

gration and Trafficking in persons;

4. Relevant financial and technical assistance for the Crime prevention activities in CEE/SEE;
5. International co-operation in returning illegal migrants.

E. The Expert Group Meetings:

The *first*, Vienna Expert Group meeting (December 1994). One of the conclusions was that the Trafficking in persons (which was taking place increasingly in an organized manner and transnationally by linking itself to other criminal activities) must become one of the core issues in combating irregular/illegal migration.

The *second*, Bern Expert Group meeting (March 1995) discussed the five reports prepared by contributing countries, IGC, IOM and ICMPD, finalizing them for the forthcoming Zürich meeting.

Among the five drafted reports, the one that dealt with the Harmonization of legislation to combat trafficking, highlighted the growing problem of Trafficking in human beings, and was calling upon the broader political initiative and decisive actions in fighting this phenomenon (notably: international co-operation in the field of extradition and the crime proceeds seizure, as well as the additional information-exchange on existing national legislations).

The *third*, Zürich Expert Group meeting (September 1995) was attended by as many as 34 Governmental delegations and representatives of eight international organizations. At this meeting the five thematic reports were formally submitted and elaborated.

Among other deliberations, this meeting gave a strong support to (the gradual harmonization of Visa-requirements among all participating states, hereby following the provisions adopted by EU and the Schengen Group,) the establishment of pan-European systems for the exchange of personal data on those involved in Trafficking in aliens; and secondly, the establishment of pan-European systems for the exchange of non-personal data related to illegal migration/trafficking (like: routes, methods, nationality, current trends, forgeries, countrified documents and visas, etc.).

Finally, Zürich decided that the implementation of the measures recommended by the 1993 Ministerial Conference (and the needs/requirements for further action in that direction), should be (re-)evaluated rather soon and on higher level – preferably by preparing a new Ministerial Confer-

3 The members of the Expert Group were: Austria, the Czech Republic, Croatia, Hungary, Switzerland, the EU and Schengen Presidency as well as three technical-support bodies: IGC, IOM and ICMPD.

ence (in about one to two years from Zürich).

The *fourth*, Bratislava Expert Group meeting (December 1995), the delegations spoke on the implementation of the decisions taken in Zürich and further discussed the preparation of the forthcoming Prague Ministerial Conference. For that purpose, four basic topics were identified as a Ministerial preparatory work: (i) Evaluation of the implementation of earlier decisions; (ii) Harmonization of Laws against Trafficking in migrants (to compile a set of existing international laws and instruments offering it to Ministerial as minimum standards); (iii) Schemes for the Information exchange; and (iv) Technical and financial assistance to relevant activities in CEE/SEE.

The *Ljubljana* (June 1996) and the *Oslo* (October 1996) Expert Group meetings

After the Bratislava meeting, another eight Working group meetings were conducted. Following the Ljubljana Expert Group meeting, the Secretariat to the Chair (ICMPD) sent a draft version of the integral report to all participating states for their comments and eventual corrections. Thus, an integral Report was finalized by September 1996 (including the all of inputs received by then).

The Oslo-meeting unanimously "reaffirmed the commitment of participating states towards the Budapest Process as a major and dynamic vehicle for pan-European co-operation on migration control matters". Further on, the meeting once more "urged participating states to strengthen their implementation efforts".

As concerns the priority areas identified by the Ministers in their 1993 Recommendations, however, Oslo noted that implementation was still lacking as the necessary Legislative changes were too slowly introduced in some Western and CEE/SEE countries. This was especially referring to the criminalization of Trafficking in foreign nationals as the existing Criminal Code and Penal procedure for such offences varied considerably between participating states.

On the other hand, the very establishment of wider systems for the exchange of personal data on people involved in Smuggling/Trafficking in aliens, was still pending as the national legislation on Data integrity was lacking in many countries (particularly many CEE/SEE countries have not ratified the 1981 Convention on Data protection). Finally, well-functioning regional system for the systematic and periodic Information exchange of non-personal data relating to illegal migration and trafficking was still missing.

Additionally, the Oslo meeting went deeper into substance (beyond the deliberations explicitly covered by the 1993 Recommendations) in trying to achieve the general goals stated by the Ministers in the Recommendations' Preamble. Major area of

such an undertaking appeared to be the gradual pan-European Entry-policies equalization and harmonization including the issue of Visa-obligations. Another such area (mentioned only in the Preamble of the 1993 Recommendations) was the need for technical and financial assistance to CEE/SEE states to facilitate the implementation of the recommendations.

F. The Prague Ministerial Conference (October 1997)

Preparatory activities

Concrete reasons to undertake the Ministerial Conference were numerous. Annually, the EU (and Schengen) states have about six Ministerial meetings. On the other hand, the CEE/SEE states had no Ministerials at all, apart from two PECO Structured Dialogue and occasional meetings (such as the Warsaw June '95 meeting). By that time, many CEE/SEE countries had expressed their wish to have a forthcoming Ministerial which would be a new political impetus for the full implementation of the 1993 Recommendations as well as proper arena to initiate new co-operation ventures. Certainly, the EU enlargement process was additional reason too. And finally, the Prague Ministerial was planned not to take formal decisions but to "politically move the agenda forward in the joint interest of tackling illegal migration, as there is no other appropriate pan-European forum for that".

All preparatory activities were made by the Chairmanship group (consisting of the Czech Republic, Hungary and Norway) with the great assistance of the Vienna-based Secretariat (ICMPD). A draft set of new Recommendations (to be later adopted by the Ministers) have been elaborated and discussed through the several Ad Hoc working groups and few bigger Budapest Group meetings.

Finally, the fifth meeting of the Budapest Group (held in Vienna, September 1997) actually adopted the final wording of the set of new Recommendations, which by then became an official document proposed for the forthcoming Prague Ministerial Conference.

Ministerial Conference

The main aim of the Ministerial Conference (Prague, October 14-15, 1997) was to address the new challenges emerging in terms of migration control in Europe since 1993. One of the major changes between two Ministerials was the enlargement of EU (from 12 to 15 member states) and the conclusion of co-operation agreements with 10 of the CEE/SEE states. Further on, since 1995, the Schengen Agreement provisions had become applicable to seven of its members and moreover, by 1996, an observer-ship status was granted to two Nordic States – non-EU members. Additionally,

the technical and financial assistance directed to CEE/SEE states (both by way of training, assistance and consultancy provided on a bilateral level or/and through multilateral funding, notably EU) was considerably growing.

Having all that in mind, the Ministers adopted the final document that includes as many as 55 recommendations grouped around the following areas:

- A. Harmonization of legislation to combat Trafficking in aliens;
- B. Pre-entry and Entry control, in particular the Approximation of Visa regimes;
- C. Return to country of origin and Readmission agreements;
- D. Information exchange on illegal migration;
- E. Technical and financial assistance to CEE/SEE states;
- F. Linkage between Trafficking in aliens and other forms of Organized crime.

The Ministerial decided that Hungary should continue to chair the Process. The informal and flexible working methods applied while preparing the Prague Conference will also be furthered for the follow-up process. Later meant that the Chairman and the Secretariat/ICMPD can call upon various participating states and organizations to assist in different tasks and in preparations of the forthcoming meetings. To end this, it was also set up at disposal of the Chairman to convene a group of Friends of the Chair (representatives of the EU Presidency, the Schengen Presidency and previously contributing governments or/and other interested countries joining the group, plus EC and other international bodies supportive to the Process). Finally, the Ministers concluded that Friends of the Chair, as a new informal group, should be able to accelerate the implementation activities. Thus, the first meeting of Friends of the Chair was prepared soon and held in Budapest in March 1998.

The *Follow-up* phase: Implementation of the Recommendations

As stipulated in the 1997 Ministerial Recommendations, the implementation and the Follow-up activities were due to go on. According to plan, the first period was initially covering years of 1998 and 1999. In order to successfully meet the requirements, soon after the Ministerial, different Working groups were formed to facilitate and monitor the implementation. However, the first preliminary assessment has been made in a way of progress reporting for the Budapest Group meeting in Warsaw.

Finally, the forthcoming Follow-up activities were grouped around the particular Recommenda-

tions' areas, such as:

Legal Reform

As regards the Follow-up of recommendations requiring legal reform (Recommendations 1 to 12, 18 and 39), with Denmark as a lead country;

Visa Approximation

For the implementation of the Recommendations 22 – 23, Slovenia as a lead country (Portoroz Visa meetings);

Return and Re-admission

For the implementation of the Recommendations 24 – 32 (return to the country of origin), and the Recommendations 33 – 38 (Readmission issue), France has been invited to take a lead;

Information Exchange System

As the result of the implementation of the Recommendations 41 and 42 the Hungarian Chair and the Secretariat/ICMPD launched, among other things, the IBPC (International Border-police Conference), while ICMPD soon set up its Liaison office in Budapest.

Linkages between trafficking in aliens and other forms of Organized Crime

Regarding to this issue, the Ministerial stated the following in its recommendation 51 – 53:

(51) ... that participating States ensure that their national law enforcement authorities give further consideration to the links between trafficking in aliens and other forms of organised crime;

(52) ... that participating States facilitate the bilateral and multilateral exchange of experience and information at operational levels in order to improve the knowledge of the methods used in different kinds of trafficking;

(53) ... that the Budapest Group, in close cooperation with relevant international bodies, ensures the preparation of a study on the extent to which international organised crime is expanding its activities into trafficking in aliens.

In order to follow up these three recommendations, in particular recommendation 53, two BP Working Group meetings were held, one in Vienna (October 1998), the other in Bratislava (March 1999). For the purpose of these meetings, a working paper/study had been prepared by the ICMPD Secretariat. The paper is based on dozens of scientific publications, articles, research, public and classified reports.

This working paper, which was also submitted to the sixth meeting of the Budapest Group held in Warsaw in December 1998, was discussed in detail in the meetings, in which representatives of some 10 governments along with representatives of Europol, Interpol, IOM, UNHCR and UN CICP participated.

As trying to keep high on its agenda the issue

of Trafficking in/Smuggling of migrants and other related abuses and crimes, ICMPD as IGO-observer has a permanent representation at the annual commissions of UN ODCCP (DCP/CND and CACP), and regularly attends with a great interest the Ad Hoc meetings on elaboration of a convention and its three additional instruments. Additionally, ICMPD covers all other relevant events in this regards (such as OSCE meetings on trafficking, SP/OC etc.).

Moreover, ICMPD concluded special MoUs with Interpol and WCO, and is underway to formalize its observer status with UN system (through the NY HQ).

3. DEFINING THE ORGANIZED CRIME

Jointly defined by the European Commission and the Expert Group on Organized crime of the Council of Europe (quite similar to the existing Europol and Interpol criteria).

The mandatory criteria (essentialia) of that definition includes the following: (i) collaboration of three or more persons; (ii) for a prolonged or indefinite period of time; (iii) suspected or convicted of committing serious criminal offences; and finally (iv) with the objective of pursuing profit and/or power.

Among the optional criteria (*eventualia*) are: (v) having a specific task or role for each participant; (vi) using a form of internal discipline and control; (vii) using violence or other means suitable for intimidation; (viii) exerting influence on politics, the media, public administration, law enforcement, the administration of justice or the economy by corruption or using other means; (ix) using commercial or business-like structures; (x) engagement in Money laundering; and (xi) operating on an international level.

Both, the UN 1994 Naples Political Declaration and Global Action Plan, as well as the forthcoming Palermo Convention specified the following six characteristics of Organized crime (which might be transnational: point 5 and 6): (i) there has to be group organization to commit crime; (ii) hierarchical links or personal relations which enable leaders to control the group; (iii) the use of violence, intimidation and corruption to earn profits or control territories or markets; (iv) the laundering of illicit proceeds to further criminal activity and to infiltrate the legitimate economy; (v) a potential for expansion into any new activity beyond national borders; and finally (vi) co-operation with other Organized Transnational criminal groups.

4. TRAFFICKING IN/SMUGGLING OF PERSONS ON THE AGENDA OF ORGANIZED CRIME

Different groups involved in organized criminal activities have met existing demands by incorporating the Trafficking in and Smuggling of persons in their agendas as it turns to be (i) minimum investment undertaking, (ii) maximum profit gained, (iii) lenient-punishable (compared to e.g. drug trafficking, the penalties for Trafficking in and Smuggling of persons are considerably lower or even non-existent in many countries).

5. THE DISTINCTION BETWEEN SMUGGLING OF AND TRAFFICKING IN PERSONS

Both Trafficking in and Smuggling of persons represent a form of irregular migration. Distinctions utilized by Interpol and Europol:

Trafficking in persons

The English legal term "trafficking" means trade or illicit trade. Thus, Trafficking in persons is a form of trade in human beings, which occurs illicitly.

Notion of Trafficking in persons:

- (i) an intermediary, a trafficker, who provides the necessary services facilitating migration; (ii) the traffickers are paid under long-term arrangements;
- (iii) crossing of border is either illegal or seemingly legal (well established legal structures within the host-countries, such as language summer schools or vocational institutes, that actually cover their real (illegal) intentions);
- (iv) Upon their arrival to a host-country, the migrants are with or without their consent, introduced into illegal activities or criminal activities;
- (v) the profit in Trafficking business comes (not solely from a transportation fee but) from a long-term exploitation;
- (vi) in most cases trafficked persons actually make a seemingly free choice to enter or stay in a country illegally.

Smuggling of persons

The English legal term "smuggling" means an illicit/illegal import or export. Consequently, Smuggling of persons means illegal transportation of human beings from the source country (export) to the country of destination or the host-country (import).

Features of the Smuggling of persons:

- (i) an intermediary, a smuggler, who facilitates the border crossing but the clients are not provided with a further extensive services like in Trafficking business;
- (ii) crossing of border is either illegal or seemingly legal;
- (iii) smuggling does not include a component of extended exploitation (the escort-fee is always paid under short-term arrangements).

Four differentiating elements that separate Trafficking in from Smuggling of persons are:

- (i) an exploitation and usage of the trafficked person over the long period of time;
- (ii) inter-dependency that forms a strong (brothers-in-arms like) linkage, between trafficked victim and Organized crime groupings;
- (iii) eligibility for further networking (recruitment for criminal purpose);
- (iv) very often trafficking itself is not a voluntarily movement, but in the case of smuggled persons it always occurs voluntarily.

6. LINKAGES AND INTERDEPENDENCIES

Organized crime groups are vertically (hierarchically) and horizontally structured in such a manner that different sub-groups (chambers) are specialized in specific activities. The level of diversification of tasks inside the criminal organization is high and aims at to meet both: higher specialization and sophistication as well as better protection from the police ride or sting operations (cell or ship-chamber system).

In the business of Trafficking in persons (long-lasting horizontal inter-dependency is very high), Organized crime groups yield a profit from both (i) the trafficking escort service itself, and (ii) from the following exploitation of the trafficked persons as manpower that is, upon the transfer, basically recruited for criminal purposes. This double use, makes Trafficking in persons business competitive with Drug smuggling and other highly (lucrative) accumulative criminal activities, and finally it explains why even the biggest and most structured Organized Crime groups (especially transnational) have incorporated Trafficking in persons into their activities.

Expanding transnational requires a permanent networking of Organization. In order to set up a new or to improve existing network, an additional recruitment has to be done repeatedly. Therefore, in most cases, not a trafficked person but the Organized Crime groups are making a final decision about: (i) how many people to traffic, (ii) which gender, skills or profile to traffic, and finally (iii)

to which destination(s) – one or several countries. It has been already noticed that after the need for recruitment of a certain profile or gender in one country is successfully met, the traffickers will not traffic in but rather smuggle of more people (driven only by a one-term financial gain without further recruiting and networking).

Nowadays, the Organized criminal groups actually regulate illegal migration flows to a great extent. As a strong horizontal interdependency remains between the trafficked persons and the organization behind it, one may say that illegal migration too, turns to further contribute to Organized crime.

7. NATURE OF THE BUSINESS OF TRAFFICKING IN AND SMUGGLING OF PERSONS

Organized crime groups basically function as any legal economic entity. Therefore an ultimate goal of Organized crime is similar to this one of commercial enterprise: to gain profit. As any profit depends on market, the criminal groups are strengthening their productivity, efficiency and organization, widening up their territory, and trying to set up an exclusive monopoly in certain field and/or on certain territory in order to maintain and to optimize their profits. Furthermore, facing the growing demands, internal competition among Organized criminal groups is rising and leads to increased violence which is exercised on both levels; internally (towards its own members) and externally (towards other gangs as well as towards the wider society).

In order to cover their illegal activities in trafficking and smuggling, as well as to launder generated money afterwards, the Organized Crime groups often expand their activities into legitimate businesses (such as: travel agencies, language schools, vocational institutes, shipping companies, non-governmental humanitarian or other non-profit organizations). Therefore, it becomes very hard to distinguish legal from illegal activities of those groups. By doing so, the Organized Crime groups are fulfilling several ultimate goals: (i) better protection from eventual ride and coverage for their illegal activity; (ii) money laundering; (iii) gradual legalization and respectability; (iv) better or more prominent and powerful positioning within the given society.

Finally, the lasting achievement of any parallel structure (parallel society) as Organized crime tends to be (when phases of accumulation, stabilization, expansion and monopolization are successfully met), is to legalize itself.

In order to do so, the Organized Crime group will use all means that are at its disposal (ranging from hard means: blackmailing, assassination, kid-

napping, discreditation, intimidation, up to soft means: corruption, humanitarian contributions, sponsorship and voluntary donations).

8. NEW TENDENCIES

Facing an increasing competition, the Organized Crime groups were forced to undergo certain specialization, or/and diversification as well as companies-like fusions / synergies.

Specialization, diversification and the fusions are creating higher vertical line (along with a longer horizontal line). Apart from widening up their markets and a bigger profit gained, it brings to the Organization (i) better damage control possibility and (ii) minimizes a law enforcement risk.

All together, along with a operational, organizational and management mobility, transferability, adaptability and flexibility, makes up the Organized Crime groups to be so successful and (if ever penetrable) almost non-recognizable/detectable as a corporate mechanism.

9. STRUCTURES OF CRIMINAL RINGS

Ranging from the single individuals, small and larger networks composed of family members (or of persons from the same region), up to strictly organized and hierarchically structured Transnational Organized criminal groups involved in the business.

The majority of the operating groups is of the same ethnic origin either in its core staff or entirely. Mostly, these groups are horizontally structured from several sub-units that are specialized in particular part or sequence of the smuggling/trafficking operation.

10. DIVERSIFICATION AND SOPHISTICATION

The tasks are diversified, the organization puzzled out of different units or elements, which then independently carry on their particular criminal sequences. Each unit or element, consists of one or more persons that are highly specialized, independent and with a little knowledge about other parts of their own organization (in most of cases, vertically they know only their direct supervisor whereas their horizontal knowledge is practically non-existent). Typical criminal Organization involved in a business of Trafficking in and Smuggling of persons is puzzled out of the following elements or units (cells):

A. Recruitment unit (common for both Traffickers and Smugglers)

Advertises the Organization and recruits the new clients by using informal exchange of information

(locals, friends, relatives, countrymen etc.) up to announcements in the Press and via Internet including a various kind of legal agencies (travel agencies, summer schools, etc.);

B. Escort unit (common for both Traffickers and Smugglers)

Deals with a transport by land, air or waterways and take care during the every particular stage of transport (in the sending country, through out transiting country/ies and to the destination – a host-country). Very often, this unit has its sub-units further specialized in particular sub-tusk, territory or transportation means;

C. Corrupted Officials (common for both Traffickers and Smugglers)

These officials, although not necessarily interconnected or known to each other, are basically acting as an integral (corrupted) unit together with members of the Organized crime group that are corrupting them. Co-operation of local officials plays a significantly important role in setting up and further networking of permanent trafficking/smuggling structure. Thus, bribed officials in the sending, transiting or/and host-country are essential for the safe transfer of illegal migrants. Like in other fields of Organized Criminal activity, the corruption is an elementary part of Trafficking/Smuggling business;

D. Guiding/navigation unit (common for both Traffickers and Smugglers)

Mostly comprised out of local agents and informants who know very little about the Organization. This in turn minimizes the risk of law enforcement and makes effective a damage control (Ship-chamber structure-like damage control is a preventive measure of Organization against any eventual ride or penetration);

E. Supporting/Logistics unit (common for both Traffickers and Smugglers)

Task of this unit is to provide all the supporting services (like safe shelter, accommodation, food, etc.). All this in order to prevent the illegal migrants from having any contact to the normal society (keeping them totally in the mercy of their traffickers). By doing so both aims will be fulfilled: (i) protection of the operation from any police ride and eventual information leakage; as well as (ii) an early stage creation of dependencies between trafficked and traffickers which will enable further long-term exploitation;

F. Debt collecting unit (common for both Traffickers and Smugglers)

This unit is responsible for keeping illegal migrants in the safe houses and collecting the transportation fees. Dislike the Smuggling of persons business in which an unit collects one-time escort-service fee from smuggled persons, in the business of Trafficking in persons that unit permanently collects

ravenous from all illegal businesses that the trafficked persons are recruited for. Usually, the debt rate is purposely made high which then transforms into a debt-bondage that proves to be the most effective control mechanism (creating additionally strong dependency between trafficked and traffickers);

G. Exploiting unit(s) (Traffickers only)

Number of units or sub-units depends on number of activities that any particular Organization is involved in (such as: exploitation of prostitution, drugs, begging, car theft, etc.).

Naturally, this unit entirely operates within the host-country/ies;

H. Re-escort unit (Traffickers only)

As said before, most of the victims of trafficking are re-escorted to several countries, irrespectively from their will. This is especially evident in the case of exploitation of prostitution and of drug smuggling.

I. Management/Supervising unit (common for both Traffickers and Smugglers)

This is the only vertical unit in the explained structure, whereas all other (from A to H) are the horizontal ones. This unit drafts, plans, finances, manages, chains and supervises the whole operation and keeps up a criminal structure operable and profitable. This unit is rarely known to the horizontal units and is hardly visible to or penetrable from the outside world (very often covered by the well established legal business).

Channels and Routes

There are several channels and routes for Trafficking in and Smuggling of persons in Europe. The channeling is in permanent change or oscillation according to several factors like: geographical position, distance between countries of departure and destination, political and economic situation, law enforcement efforts in different areas, and a state of corruption. Organized crime groups are flexible and adaptable to any change of circumstances (sometimes changing their routes from one day to another).

When expanding into new criminal areas, the new activities are often channeled through the old and already tested routes (for example routes used for drug trafficking are now further used for Trafficking in and Smuggling of persons business). By doing so, the Trafficking and Smuggling organizations are directly influencing both (i) the direction as well as (ii) the intensity of migration flows.

In the Northern Europe, the problem of Trafficking in and Smuggling of persons is of much smaller magnitude than elsewhere in Europe. The Northern (green and blue) routes go through Russia and the Baltic States (such as Estonia, Latvia and Lithuania), and from there (mostly) transiting

through the Nordic countries, they forward to elsewhere in Europe. In the CEE/SEE region, the Balkan (green and blue) route is probably the most notorious one that is used by criminal organizations (Turkey – Greece – former Yugoslavia – Hungary/West; Black Sea – Romania – Serbia – Hungary/West; Turkey – Bulgaria – Romania – Hungary – Slovakia – Czech Republic/West – Poland/West; Turkey – Bulgaria – Macedonia – Albania – Italy/North or Turkey – Greece – (Albania) – Italy/North).

Due to the recent conflicts in the region, however, Traffickers and Smugglers increasingly switched to other routes whereas the Balkan countries became major countries of origin. Currently, citizens of the post-Yugoslav countries are the largest single grouping involved in Trafficking and illegal migration (mostly of their own nationals) after Romanians.

Further on, Poland having its attractive (very long and practically non-protectable) green border with Germany has become a major transit country of the eastern route (which continues to Belarus or/and Ukraine and leads further to Russia and Mongolia or to Caucasus and to central Asia, and is used to transport both Asians and Africans). Budapest and Prague are becoming an important transit points for Smugglers and Traffickers from Middle and Far East, Balkans and former Soviet Union. Highways like Warsaw – Berlin and Budapest – Vienna are very popular routes that Traffickers and Smugglers are concentrating around.

The Mediterranean blue-route crosses the Mediterranean and brings people from Africa and Asia through Middle East and/or North Africa to Europe. The flow from the south to the north is mostly via Greece, Cyprus, Malta, Italy, France and Spain. Greek and other islands of Mediterranean proved to be an excellent transit points or last stops on the way to Western Europe.

11. GOING TRANS-CONTINENTAL

The political developments and the socio-economic conditions of the last decades in Europe has led to the fact that, in addition to more traditional Organized criminal groups (such as Italian and Asian organizations or the Latin American Drug cartels), there are several new transnational organized criminal structures that are present and operable in Europe (such as groups from the former Soviet Union, from SEE countries and Africa).

There are clear traces that at least groups from Afghanistan, China (Triads), Iran, Kosovo, Thailand, Nigeria, Pakistan, Columbia, Turkey (mostly Kurdish rings), and Japan (Yakuza) have been involved in both: the drugs and precursors, firearms and explosives, nuclear and illicit bio-chemical materials, and stolen car trafficking as well as in

Smuggling of persons into Europe and overseas.

Moreover, non-European Organized crime groups have already established there branches in Europe (or have made connections/synergies with the existing European groups in Italy, Greece, Ireland, CEE/SEE, Germany, France etc.). That was a new impetus in dealing with illicit drugs and narcotics, firearms, vehicle theft, black labor, frauds, false documents and credit-cards manufacturing, counterfeiting, money laundering (partially through legally established chains of gambling houses), extortion. Some of these groups are connected to (or even formed by) the political radicals and therefore involved also in terrorism, (politically motivated) blackmailing, kidnapping, assassinations, sabotages and diversions, etc.

In last ten years, a lot of these non-European groups (particularly the bigger and more sophisticated ones) have established their legal businesses registering firms in CEE/SEE countries, or/and laundering money by participating in the privatization and the foreign investment process in CEE/SEE countries.

ANNEX :

List of the Core International Instruments of relevance

- 1904 International agreement for the Suppression of the White Slave Traffic
- 1910 International Convention for the Suppression of the White Slave Traffic
- 1921 International Convention (Suppression of the Traffic in Women and Children)
- 1926 Slavery Convention
- 1930 ILO Convention No. 29 concerning Forced Labor
- 1933 International Convention (Suppression of the Traffic in Women of Full Age)
- 1945 United Nation Charter and Statute of the International Court of Justice
- 1947 Protocol to amend the Convention for the Suppression of the Traffic in Women and Children and the Convention for the Suppression of the Traffic in Women of Full Age (a/m conventions No. 3 and 6)
- 1948 Universal Declaration of Human Rights
- 1949 Protocol amending the International Agreement for the Suppression of the White Slave Traffic and the International Convention for the Suppression of the White Slave Trade (a/m conventions No. 1 and No. 2)
- 1950 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- 1951 Final Protocol to the Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others
- 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms
- 1952 Protocol amending the Slavery Convention of 1926
- 1951 The Convention relating to the Status of Refugees (the Geneva Convention)
- 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery
- 1957 European Convention on Extradition
- 1966 The International Covenant on Civil and Political Rights (ICCPR)
- 1967 Protocol relating to the Status of refugees (NY Protocol to the Geneva Convention)
- 1972 European Convention on the Transfer of Proceedings in Criminal Matters
- 1977 Additional Protocol to the Geneva Convention relating to the Protection of Victims of Non-International Armed Conflicts
- 1979 Convention on the Elimination of All Forms of Discrimination against Women
- 1979 International Convention against the Taking of Hostages
- 1981 European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data
- 1989 Convention on the Rights of the Child
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families
- 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
- 1990 European Convention on the Implementation of the Schengen Agreement
- 1995 EUROPOL Convention
- 1995 Implementation of the Naples Political Declaration and Global Action Plan against Organized Transnational Crime, report of the UN Secretary-General
- 1996 International Co-operation in combating transnational crime, smuggling of illegal migrants, report of the UN Secretary-General
- 1999 UN General Assembly: Guidelines for Reporting by governments on the implementation of the Global program of Action 2003 – 2008, UNOV/CND
- 2000 Vienna Declaration on Crime and Justice of the 10th UN Congress on the Prevention of Crime

and the Treatment of Offenders

2000 International (Palermo) Convention against Transnational Organized Crime (and additional instruments/protocols)

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1998 International co-operation in combating transnational crime, Action against illegal trafficking in migrants, including by sea, Addendum to draft international convention against the smuggling of illegal migrants and the draft protocol aiming at combating the trafficking and transport of migrants by sea, UN doc. E/CN.15/1998/5/Add.1.

2000 forthcoming UN (Palermo) Convention against transnational organized crime and additional instruments (Trafficking and Smuggling protocols)

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