



# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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**Review of the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto: information-gathering and possible mechanisms to review implementation; expert consultation on criminalization; expert consultation on the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime; expert consultation on the protection of victims and witnesses**

## **Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: consolidated information received from States for the first reporting cycle**

### **Report of the Secretariat**

## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction . . . . .	1-2	3
II. Analysis of national legislation and measures in relation to the relevant provisions of the Protocol . . . . .	3-35	3
A. Definition and criminalization requirements . . . . .	3-28	3
B. Difficulties encountered and assistance required. . . . .	29-30	13
C. Technical assistance provided. . . . .	31-35	13

\* CTOC/COP/2008/1.



III. Concluding remarks .....	36-38	14
Annex		
Status of responses to the questionnaire on the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: first reporting cycle		16

## I. Introduction

1. By its resolution 55/25 of 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime<sup>1</sup> and two supplementary protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>2</sup> and the Protocol against the Smuggling of Migrants by Land, Sea and Air.<sup>3</sup> The Trafficking in Persons Protocol entered into force on 25 December 2003. At its first session, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided that for its second session the programme of work with respect to the Trafficking in Persons Protocol would include a review of the basic adaptation of national legislation of States parties and States signatories to the Protocol (Conference decision 1/5). At its second session, the Conference decided that its programme of work under this item for the third session would include the following areas:

(a) Consideration of matters related to assistance to and protection of victims of trafficking in persons (article 6 of the Trafficking in Persons Protocol) and the status of such victims in receiving States (article 7);

(b) Consideration of matters related to repatriation of victims of trafficking in persons (article 8);

(c) Consideration of matters related to prevention of trafficking in persons (article 9) and information exchange and training (article 10).

2. The present report is an updated version of the analytical report on the implementation of the Trafficking in Persons Protocol that was submitted to the Conference at its third session. It contains consolidated information and an analysis of all the replies received from States to the relevant questionnaire and checklist<sup>4</sup> disseminated by the Secretariat. The report also highlights the progress made towards meeting the requirements set out in the Protocol and the difficulties that States sometimes face in implementing the provisions of the Protocol. A list of the States whose responses had been received by the time of drafting of the present report is included in the annex. It should be noted that in cases in which no update was received, the responses submitted previously were assumed to still be valid.

## II. Analysis of national legislation and measures in relation to the relevant provisions of the Protocol

### A. Definition and criminalization requirements

#### 1. Definition and criminalization of trafficking in persons at the national level

3. Article 5, paragraph 1, of the Protocol requires States parties to establish as a criminal offence the conduct of trafficking in persons, as defined in the Protocol

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<sup>1</sup> United Nations, *Treaty Series*, vol. 2225, No. 39574.

<sup>2</sup> *Ibid.*, vol. 2237, No. 39574.

<sup>3</sup> *Ibid.*, vol. 2241, No. 39574.

<sup>4</sup> For additional information on the checklist, see CTOC/COP/2008/2.

(see below). Most of the States submitting replies to the questionnaire indicated that this conduct was criminalized in their domestic legal framework. Of those submitting a negative response, Sri Lanka indicated that this type of criminal offence did not exist in its legislation. South Africa stated that its legislation contained no specific framework to deal with trafficking in human beings and that it relied on general legislation with regard to sexual offences and immigration offences to counter trafficking in persons. Jamaica reported that the problem of trafficking had never existed in the country and therefore no legislative action had been taken. Mauritius stated that its domestic legislation covered only one specific form of trafficking in children, where a person caused parents to abandon their child or acted as an intermediary between parents and those willing to adopt the child. Angola reported that its legislation penalized prostitution, but not necessarily for the purpose of exploitation. Guinea stated that it had adopted measures in line with the Protocol in part, but did not elaborate. Argentina stated that trafficking in persons was not regulated domestically as such and further referred to other offences established in its legislation that were related to this conduct. Azerbaijan, the Niger, Serbia and Montenegro<sup>5</sup> and Thailand reported on action undertaken to amend current legislation. New legislation was also under consideration in Algeria, Kuwait, Nicaragua, the Niger, Saudi Arabia, South Africa and Tunisia. Afghanistan indicated that national efforts were ongoing to deal with the problem of trafficking in persons and in particular to address the relevant legislative aspects. Peru declared its intention to initiate action towards amending the national legislation to modify the definition of trafficking and extend its exploitative purpose with a view to covering forced labour. Ireland also reported on ongoing preparation of domestic legislation, which would take into account the terms of the Protocol and other relevant international instruments. In that regard, it was specified that the enactment of the new law had been deferred throughout the period of negotiations for the elaboration of the Council of Europe Convention on Action against Trafficking in Human Beings, as it was the national practice to await the completion of the negotiation of international instruments before enacting legislation, to ensure compliance with them.

4. Most of the States criminalizing trafficking in their legislation stated that the offence was defined in accordance with the definition contained in article 3, subparagraph (a), of the Protocol.<sup>6</sup> Negative responses reflected, inter alia, lack of legislation providing for an ad hoc definition (Algeria) and incorporation of trafficking components in other provisions of domestic legislation (Angola, Brazil, Egypt, Estonia, Malaysia and Myanmar), including provisions on procuring

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<sup>5</sup> From 3 June 2006, the membership of Serbia and Montenegro in the United Nations was continued by Serbia. The response to the questionnaire on the implementation of the Trafficking in Persons Protocol for the first reporting cycle was submitted to the Secretariat before that development and reflected the national position of the former Serbia and Montenegro.

<sup>6</sup> According to article 3 of the Protocol, the offence of “trafficking in persons” is broken down into three constituent elements to be considered jointly: criminal acts (“recruitment, transportation, transfer, harbouring or receipt of persons”), the means used to commit these acts (“the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”) and the goals (forms of exploitation), including, at a minimum, “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

(promotion and/or facilitation of prostitution), child pornography and generally protection of minors (Mexico), as well as lack of reference to the means used to commit the offence (Azerbaijan and Chile) and a narrow concept of the purpose of trafficking only for prostitution (Chile) or other forms of sexual exploitation (Peru). Chile also reported that trafficking in minors within its national territory was covered by its domestic legislation, as opposed to trafficking in adults, which was not. Ireland pointed out that trafficking in persons was generally dealt with in its Illegal Immigrants Act and that trafficking in children for the purpose of sexual exploitation was particularly criminalized.

5. Many States referred to amendments of their national legislation that had already been put in place, such as Brazil reporting on the expansion of the scope of protection to men and children and amendments to expand the criminal liability to persons who also act as intermediaries in the commission of the offence, and El Salvador reporting on amendments to increase the effectiveness of the national criminal justice system and provide more assistance to victims of trafficking in persons, as well as reforms of evidentiary and investigation rules. Other countries referred to ongoing or intended law reform action with a view to ensuring compliance with the requirements of the Protocol (Angola, Azerbaijan, Chile, Greece, Honduras, Jamaica, Lithuania, Malaysia, Myanmar, Peru, Sri Lanka and Switzerland), covering illegal activities linked to trafficking, such as child pornography (Ecuador), and generally child sexual exploitation (Mexico) or removal of organs (Costa Rica, Czech Republic and Portugal) or, finally, further streamlining existing legislation (Canada, Latvia and Sweden).

6. In relation to the specific acts referred to in the Protocol definition of “trafficking in persons”, almost all countries replying to the questionnaire reported that the action of trafficking, as established in their domestic legal framework, consisted of recruitment, transportation, transfer, harbouring and receipt of persons. The only countries that reported otherwise were Chad, the Democratic Republic of the Congo, New Zealand and Portugal regarding recruitment; Chad and New Zealand concerning transportation and transfer; Chad, Kazakhstan and Peru regarding harbouring; and Bulgaria, Chad, the Democratic Republic of the Congo, Peru and Tajikistan with regard to receipt of persons. Bulgaria included admission of individuals or groups of people as a specific act under its national trafficking law.

7. The vast majority of countries responding to the questionnaire and verifying domestic definition of trafficking in accordance with the Protocol requirements also confirmed that their legislation identified as means used to commit the trafficking offence, the ones mentioned in article 3, subparagraph (a), of the Protocol. Exceptions reported on the identification of each of these means were as follows: (a) threat or use of force: Azerbaijan, Chad, Honduras, Kazakhstan, Peru, Thailand and United Republic of Tanzania; (b) other forms of coercion: Azerbaijan, Chad, El Salvador, Honduras, Kazakhstan, Peru, Thailand and United Republic of Tanzania; (c) abduction: Azerbaijan, Chad, Ecuador, El Salvador, Honduras, Kazakhstan, Nicaragua, Peru, Spain, Thailand and United Republic of Tanzania; (d) fraud: Azerbaijan, Chad, El Salvador, Honduras, Kazakhstan, Peru and Thailand; (e) deception: Azerbaijan, Chad, El Salvador, Honduras, Peru and Thailand; (f) abuse of power: Azerbaijan, Chad, El Salvador, Honduras and Thailand; (g) abuse of position of vulnerability: Azerbaijan, Chad, El Salvador, Honduras, Kazakhstan and Thailand; and (h) giving or receiving of payments or benefits to

achieve the consent of a person having control over another person: Azerbaijan, Belarus, Chad, Honduras, New Zealand and Peru. Despite the fact that Colombia stated that trafficking in persons was defined domestically in accordance with the Protocol definition, none of the above-mentioned means was reported to be mentioned in the national legislation. The consideration of means used in the trafficking process (violence, intimidation and abuse of authority) as aggravating circumstances to the basic offence was further reported by Chile. Spain clarified that abduction per se did not exist in its penal code but was included in the category of kidnapping. Spain also indicated, that force, fraud, intimidation, vulnerability of the victim and abuse of authority were considered aggravating circumstances. Bulgaria specified that the means element was only taken into consideration as an aggravating factor.

8. Furthermore, the responses received from States reflected the national approaches as to what was included in the concept of the exploitative purpose of the trafficking offence. Nicaragua was the only country that did not report the establishment of any exploitative purpose when defining the offence of trafficking in persons. Almost all countries replying to the questionnaire identified the exploitation of the prostitution of others or other forms of sexual exploitation as a conduct falling within this concept. Turkey provided updated information on a new provision of the national penal code introducing the definition of trafficking in persons and criminalizing the relevant conduct, which did not include the exploitation of prostitution of others as an exploitative purpose of trafficking in persons. However, it was noted that the facilitation and promotion of prostitution was criminalized separately. In addition, most of the countries considered the following conducts within the ambit of exploitation:

(a) Forced labour or services (the only countries reporting otherwise were Chad, Costa Rica, Peru, Portugal and the United Republic of Tanzania);

(b) Slavery or practices similar to slavery (the only countries providing negative responses were Chad, Iceland, Kazakhstan, New Zealand, Portugal and the United Republic of Tanzania);

(c) Servitude (exceptions included Chad, Ecuador, Iceland, Latvia, New Zealand, Peru, Portugal, Turkey and the United Republic of Tanzania);

(d) Removal of organs (the only countries reporting otherwise were Chad, Ecuador, France, the Niger, Peru, Portugal, Thailand and the United Republic of Tanzania; in this regard, Costa Rica reported that the purpose of extraction of organs was stipulated only in the context of trafficking in minors, but not generally in the context of trafficking in persons; furthermore, Germany indicated that trafficking in and removal of organs were dealt with in its specific legislation on transplants).

9. In view of the fact that the Protocol does not define the ambit of the “purpose of exploitation” in an exhaustive manner, States were also asked to specify whether their domestic legislation allowed for the inclusion of any other illegal act in the exploitative purpose of the trafficking offence. In that connection, responses confirming that option made reference to additional forms of conduct, such as forcing a person to commit an offence (Belgium and France), vicious practice (Bulgaria), illegal use of tissue (Slovakia), involuntary domestic servitude or bonded labour (Dominican Republic, Nigeria and Tajikistan), forced marriage (Colombia, El Salvador and the former Yugoslav Republic of Macedonia),

provocation or conspiracy to commit kidnapping, bodily harm or extortion (Spain), illegal adoption (Costa Rica, Dominican Republic, El Salvador, Tajikistan and the former Yugoslav Republic of Macedonia), forced begging (Belgium, Colombia and Romania), exploitation in a way that places the victim in distress (Sweden), illegal use of persons in armed conflicts (Tajikistan) and forced fertilization (the former Yugoslav Republic of Macedonia). Alternatively, one country (Italy) reported inclusion in the domestic legislation of the expression “or in any case subjects the victim to performances that do not imply exploitation”, thus ensuring the delineation of the offence of trafficking in persons in a broader context.

10. Pursuant to article 3, subparagraph (b), of the Protocol, the consent of a victim of trafficking in persons to the intended exploitation is to be irrelevant where any of the means set forth in the definition of trafficking in persons have been used. Most States responding to the questionnaire confirmed that their legislation was in line with that requirement, thus ensuring that traffickers could not use consent as a defence against trafficking charges.

11. Only a few States reported otherwise, namely, that the consent of the victim of trafficking in persons was taken into consideration under their domestic legislation. Of these, Ecuador referred to the provision of its penal code that established aggravating circumstances in cases where the victim lacked the capacity to consent. Albania, Honduras and Moldova did not provide further explanation to support their responses. The former Yugoslav Republic of Macedonia stated that its national legislation did not contain an explicit provision in line with article 3, subparagraph (b), of the Protocol. Latvia reported on the specific provision of its legislation that criminalized trafficking in persons for sexual exploitation to a foreign State and noted that it was essential to establish whether a trafficked person gave his or her consent to trafficking or not, “because this condition may change the grounds of criminal liability and, thus, the applicable penalty”. Egypt also clarified that the absence of the consent of the victim was taken into consideration to determine stricter penalties for the perpetrators. Namibia pointed out that, according to its legislation, the consent of the victim was considered where some of the specific means set forth in the Protocol’s definition were used (fraud, deception, abuse of power and abuse of a position of vulnerability).

12. In relation to trafficking in children, as defined in the Protocol (i.e. under 18 years of age), the Protocol does not require the means used in the trafficking process to be established as an element of the offence (art. 3, subparas. (c) and (d)). In that connection, States were asked, on the one hand, to provide information on the age limits prescribed in this domestic legislation for considering a person a “child” and, on the other, whether the Protocol’s approach was reflected in their domestic legislation.

13. In relation to the first question, most responding States confirmed that their national legislation provided for the same age limit as the Protocol. Variations from that general practice were reported by a number of States (Argentina, Brazil, Chile, Costa Rica, Croatia, Dominican Republic, Ecuador, Germany, Greece, Mexico, Myanmar, Peru, Portugal, Romania and Sri Lanka) whose legislation contained different age thresholds (12, 13, 14, 16, 17 or 21 years of age). Some used the terms “minors” and “adolescents” to define additional age groups.

14. With respect to the second question, the majority of those replying to the questionnaire indicated that the means of trafficking were not a necessary element of the domestic offence of trafficking in children. In some States the law considered such means aggravating circumstances to the principal offence (Belgium, Bulgaria, Dominican Republic, Latvia, Malta and Spain). In that connection, Mauritius provided supplementary information regarding domestic legislation on child protection, which indicated the absence of means of trafficking as a definitional element of the offence of child trafficking, but their inclusion in the description of other offences such as abandonment or abduction of children. The remaining responses referred to national laws providing for the means of trafficking as a constituent element of the offence of trafficking in children. One of the reasons mentioned in those responses was the fact that the main trafficking offence was defined generally for all persons, means used and purposes (El Salvador). Another justification implied in the responses was that it was considered appropriate to include in the legislative language and further describe specific circumstances of abusive behaviour against children, especially in view of the fact that trafficking in children was an aggravated form of the basic offence (Belarus, Greece and Italy). Portugal reported that its legislation treated the means of trafficking as necessary only in cases of trafficking in minors to foreign countries for purposes of prostitution or other related acts. Albania, Brazil, Burkina Faso, Cameroon, the Central African Republic, Egypt and Kuwait made reference to offences against children established in their legislation, which encompassed some of the means of trafficking stipulated in the definition contained in the Protocol as forms of the basic criminal conduct, such as abduction of minors and adolescents, sale of children or pupils (“through the giving and receiving of payment”) and abuse of power against minors and adolescents. It was also reported that reference to specific means (threats, coercion) was made in the context of trafficking in minors for the purpose of removal of organs (Tajikistan). The Niger reported that legislation in that regard had yet to be adopted.

15. The general overview of national approaches to trafficking in persons as a whole and its components (acts, means and purpose) could serve as a basis for further discussion by the Conference, focusing on how best to achieve clarity and consistency in legislative responses. The mandatory requirement set forth in the Protocol is to criminalize the conduct of trafficking in persons as a combination of its constituent elements and not those elements themselves. Individual elements prescribed in the definition of “trafficking in persons”, such as coercion, abduction or prostitution,<sup>7</sup> need not be criminalized, although States parties are not precluded from establishing supplementary offences corresponding to those elements that could also support the purpose of the Protocol (see below).

16. The emphasis on the requirement to penalize trafficking in persons as a compound action that amalgamates and synthesizes the three definitional elements of the act committed, the means used and the purpose envisaged is of particular

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<sup>7</sup> The terms “exploitation of the prostitution of others” or “other forms of sexual exploitation” are not defined in the Protocol, which is therefore without prejudice to how States parties address prostitution in their respective domestic laws (see the interpretative notes for the Trafficking in Persons Protocol (*Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime Convention and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), p. 347)).

importance for the consolidation of more effective legislative responses to the problem. On the contrary, concentrating solely or heavily on, for example, the movement and transportation element may prove in many cases to be a partial approach. Indeed, at the time of movement or transportation, it is often unclear whether the person or persons concerned are trafficked. Neither the victims themselves nor border officials may know the ultimate purpose for which transfer is taking place, nor the ultimate conditions existing in the country of destination. In addition, it is not always clear at the time of movement whether its purpose is exploitation. It is usually only at the place of destination, where persons are subjected to exploitation in its various forms, that it can be obvious that trafficking has taken place. Until that point, movement may be for other (legitimate or illegitimate) reasons. Consequently, trafficking in persons needs to be seen and treated accordingly in its entirety as an activity commencing through the commission of certain defined acts but also resulting in an exploitative purpose, while encompassing the means involved for gaining control over the victim, which are crucial to ascertaining the irrelevance of his or her consent.

17. In the context of the discussions on the subject, it may be appropriate to emphasize the added value of the definition of trafficking in persons contained in the Protocol and the fact that it represents a consensus-based conceptual standardization aimed at facilitating the convergence of national approaches on the delineation of the trafficking offence. That, in turn, was intended to serve as a framework for the establishment of domestic criminal offences that would lend themselves to promoting efficient and effective international cooperation in investigating and prosecuting trafficking cases. An additional issue for consideration could be that, unlike the offences of smuggling of migrants or trafficking in firearms, their parts and components and ammunition, which encompass the element of transborder activity, trafficking in persons may also occur within a single country.

18. The Conference may wish to consider practical issues in relation to the requirements of the Protocol related to the definition of trafficking in persons, such as the irrelevance of the consent of the victims when the listed means of trafficking were used or the non-consideration of such means when children are trafficked. The discussion on such issues would be of relevance especially to consideration of the implementation of chapter II of the Protocol and the measures taken by national authorities of States parties to assist and protect victims of trafficking in persons.

## **2. Distinction between trafficking in persons and smuggling of migrants**

19. Most States responding to the questionnaire indicated that their national legislation treated trafficking in persons and smuggling of migrants separately as a result of their different nature either in terms of the consent of the person transferred or in terms of the ultimate purpose of exploitation (see also the analytical report on the implementation of the Migrants Protocol (CTOC/COP/2005/4/Rev.2)). The only deviations from this general rule were reported by States lacking legislation on trafficking (Angola, Jamaica and South Africa) and smuggling (Costa Rica and Tajikistan) or by those with legislation which did not make the distinction between those crimes (Burkina Faso, Malaysia and Myanmar). Burkina Faso explained that no distinction existed in its legislation because laws against trafficking in persons and laws preventing the smuggling of migrants were felt to focus on similar goals. Ireland indicated that the distinction existed with regard to trafficking in children,

but not in relation to the general offence of trafficking in persons, defined under the national Illegal Immigrants Act.

20. However, it should be noted that, as experience has shown, it is often difficult to ascertain whether a particular case falls under the definition of trafficking in persons or smuggling of migrants, as both activities share some common elements. Competent investigative authorities appear likely to launch a smuggling investigation, which may later focus on human trafficking if additional evidence comes to light. In such cases, appropriate attention needs to be devoted to making the necessary distinction in order to avoid situations in which victims of trafficking may not be afforded the protection foreseen by the Trafficking in Persons Protocol. For this reason, it would be important for Member States that have not yet done so to ensure the existence of the appropriate legal framework that differentiates with precision between the offences concerned and defines the appropriate criminal justice responses accordingly. This would also contribute to making judiciary and law enforcement personnel more familiar with both concepts, thus reducing the risk of uncertainty or inconsistency in action in their day-to-day casework.

### **3. Criminalization of individual offences associated with trafficking in persons**

21. As mentioned above, States parties to the Protocol are not precluded from criminalizing in their domestic legislation any individual conducts related to any of the stages of the trafficking process. States indicating in their replies that trafficking in persons was not criminalized under their national legal framework in accordance with the requirements of the Protocol were therefore also asked to provide information on any individual offences established domestically and associated with trafficking in persons. The Secretariat received responses from countries reporting that new legislation was under consideration (South Africa and Tunisia) and others indicating that trafficking in persons was defined domestically in accordance with the Protocol (El Salvador and Peru), thus making it possible to cover additional national approaches oriented towards establishing both the basic trafficking offence and separate crimes related to it.

22. Among the individual offences related to trafficking in persons identified by States responding to the questionnaire were the following: offences against sexual freedom, including forcing to, facilitation of and promotion of prostitution (Argentina, Brazil, El Salvador, Estonia, Lithuania, Malaysia, Nigeria and Peru); promotion or facilitation of the entrance in or the exit from the country for the purpose of prostitution of minors, or adults when means of deception, abuse of authority or intimidation are involved (Argentina); procuring (Estonia) and economic exploitation of prostitution (Argentina); prostitution involving minors and child sexual tourism (Estonia and Peru); seduction (Peru); use of minors in pornography (El Salvador and Estonia); as well as corruption of minors (Argentina, Brazil and El Salvador), including its aggravated form (El Salvador); and rape (South Africa). Peru also reported on the criminalization of being a client of a prostitute. Other offences reported were the exploitation of a child's begging, including the establishment of aggravated circumstances if an organized criminal group was involved (Tunisia), illicit extraction of organs (Chile, Estonia and Peru), intimidation (South Africa), abduction and kidnapping (Estonia, Honduras and South Africa), illegal detention (Chile), hostage-taking, enslaving and sale or purchase of children (Estonia), proxenetism (Peru), child labour and forced labour

(South Africa), assault in its various forms (South Africa), money-laundering (Chile and Estonia), illegal entry (South Africa), kidnapping (Chile and Peru) and corruption (South Africa). Switzerland reported that, according to case law, all the stages of the process of trafficking in persons were covered by the term “human trafficking”.

23. As already mentioned, the option of prosecuting related offences could support the purposes of the Protocol and be useful too in States where a distinct criminal offence does not yet exist or where the penalties for trafficking do not sufficiently reflect the seriousness of the crime. There may also be cases where the existing evidence is not sufficient to support prosecution for trafficking in persons, but may be adequate for prosecuting related offences. The prosecution of accused individuals for additional or overlapping offences may also be useful in demonstrating before the court the seriousness of a particular trafficking operation. In some instances, for example, evidence relating to certain aspects of a trafficking operation, such as the total number of victims, length of time of the operation, the corruption involved or the seriousness of the harm done to the victims, may only be fully revealed by bringing additional charges before the court on related offences.

#### **4. Criminalization of attempt to commit the offence of trafficking in persons**

24. Despite the fact that the obligation to criminalize the attempt to commit the offence of trafficking in persons is subject to the basic concepts of the legal system of States parties (art. 5, para. 2 (a) of the Protocol), most of the responses received from States confirmed the establishment of criminal liability at the domestic level also for those attempting to commit the basic trafficking offence. Only a few exceptions were reported of States lacking legislative provision on this issue (Azerbaijan, Jamaica and Niger). One country (Philippines) provided a negative response on the understanding that no stages of trafficking were provided for in its legislation, pointing out, at the same time, that the specific law on child abuse and exploitation treated certain acts as an attempt to commit trafficking in children, although those acts were not those contemplated by the Protocol. Chad provided a negative response but did not include details. The information provided was not extended to more specific issues as to what exactly constituted an attempt in trafficking cases. In that connection, some countries reported that such issues were regulated in the general provisions of national legislation (Angola, El Salvador and Mauritius). Ireland also reported that, at the time of submission of the national response, attempt to commit the offence of trafficking in persons was not criminalized, since the national legislation pre-dated the Protocol and accordingly was not designed to take that issue into account. Madagascar specified that the attempt to commit a criminal offence was always considered as the criminal offence itself, provided that execution had already begun and had not been abandoned later.

25. Whether or not a broader or more restricted concept of attempt is used to specify the actual action required in furtherance of the basic intent to commit the principal offence, the option of prosecuting cases of attempt could be an effective measure, especially in cases where the trafficking process covers a relatively long period and is sometimes interrupted by law enforcement authorities before completion. In addition, in view of the difficulties often faced by the authorities involved in collecting the necessary evidence to build a trafficking case, such an option could be further reinforced by criminalizing individual offences associated

with trafficking in persons, thus ensuring that no element of the criminal activity concerned remained unpunished (see also the corresponding report on the implementation of the Migrants Protocol (CTOC/COP/2005/4/Rev.2)).

**5. Criminalization of participation as an accomplice in the offence of trafficking in persons**

26. Article 5, paragraph 2 (b), of the Protocol requires States parties to establish as criminal offences any acts of participating as an accomplice in the basic trafficking offence. Most States responding to the questionnaire stated that such acts were criminalized in their domestic legal systems. Two States (Chad and Jamaica) provided a negative response, because of lack of legislation. Responses in some cases included more specific information on the types of participation in the basic trafficking offence. However, in general terms, reference was made to the application of the general provisions of the domestic penal code or other pertinent legislation.

**6. Criminalization of organizing or directing other persons to commit the offence of trafficking in persons**

27. Pursuant to article 5, paragraph 2 (c), of the Protocol, States parties are obliged to criminalize any acts of organizing or directing other persons to commit the basic trafficking offence. Again, the penalization of such acts is reflected consistently in the responses received. The only cases departing from the general rule included States lacking specific legislation (Angola, Jamaica and South Africa) or having in place general provisions that could be applicable (Mauritius) or, finally, States in the process of reviewing the relevant legal framework to cover this issue as well (Iceland and Peru). South Africa clarified that a person who organizes a person or persons to commit an offence could be prosecuted as an accomplice and could be liable, upon conviction, to the same punishment as the person or persons who committed the offence. Bulgaria reported that its national legislation provided that a person who forms or leads an organized criminal group shall be punished by deprivation of liberty for three to five years.

28. The responses on this issue could be considered jointly with the corresponding replies of States on the issue of organizing and directing the commission of serious crimes involving an organized criminal group (art. 5, para. 1 (b), of the Convention), dealt with in the context of the reports on the implementation of the Convention (CTOC/COP/2005/2/Rev.2 and CTOC/COP/2006/2/Rev.1). In that connection, it should be noted that the confirmed ability to establish at the domestic level the criminal liability of persons who give orders with a view to organizing or directing the commission of the principal trafficking offence but are not involved in the perpetration of the offence itself has the advantage of dealing effectively with more organized schemes or networks of trafficking involving acts of more than one person and relationships among the perpetrators without it being necessary to resort to the requirement of the involvement of an organized criminal group (see art. 34, para. 2, of the Convention). This option could also be instrumental in dealing with small groups of traffickers operating in loose connection with each other and usually specialized in different aspects of the trafficking chain, such as recruitment, transportation or management.

## **B. Difficulties encountered and assistance required**

29. A number of States made reference to specific difficulties hampering the adoption of adequate national legislation to implement the provisions of the Protocol. Such difficulties included the lack of experienced staff and policies to accord high priority to the issue (Mauritius), the lack of experience concerning the impact of and the challenges posed by trafficking in persons (Jamaica), the existence of administrative problems and deficiencies impeding the establishment of appropriate institutional capacity (Malaysia), as well as the lack of the necessary regulations to implement the relevant legislation (Dominican Republic). The need for assistance in providing the information required by the questionnaire was noted by Moldova, the Philippines and Tajikistan.

30. Some of the responses therefore stressed the need for provision of technical assistance focusing on enhancing domestic criminal justice and law enforcement capability to fight trafficking in persons. Benin asked for financial and material assistance to accelerate the process of adopting new legislation. Burkina Faso referred to the need for specialized expertise in order to increase the overall efficiency of actions. Chile, in particular, noted the importance of such technical assistance from countries that had more experience and resources in this field, while Jamaica and Mauritius specified as a key component of potential technical assistance programmes assistance in drafting legislation both reflecting international standards and in line with domestic needs. Cameroon referred to the need for assistance in analysing existing legislation and drafting new legislative provisions. Some States stressed the significance of training programmes in general and for criminal justice officials, including law enforcement officers, judges, investigators and specialized psychologists (Chad, Ecuador, El Salvador and Niger). El Salvador referred to the need to support victim protection schemes and appropriate legislative reform. Serbia and Montenegro specified as forms of possible technical assistance “financial support and expert assistance in education”. Thailand reported that its national authorities required technical assistance in the field of victim identification and evidentiary gathering. Togo expressed the desire to form partnerships for developing its technical and financial capacities.

## **C. Technical assistance provided**

31. A number of countries reported that they participated in various technical assistance programmes and projects to prevent and combat trafficking in persons, carried out either bilaterally or through international organizations. Cooperation with the Secretariat in implementing technical assistance projects focusing on trafficking in persons was reported by France, Germany and Portugal, while Canada referred to its financial support for relevant activities of the Secretariat. Portugal indicated that its national authorities had undertaken specialized technical assistance activities aimed at listing the relevant legislative needs at the national level and creating the appropriate legal framework that would facilitate application of the United Nations instruments against transnational organized crime, including the Trafficking in Persons Protocol.

32. Other countries referred to their cooperation with the Organization for Security and Cooperation in Europe (France and Germany) or international police

organizations, such as the International Criminal Police Organization (INTERPOL), the European Police Office or the Association of Southeast Asian Nations Chiefs of Police (Malaysia, Namibia, Spain and Switzerland). Participation in and support for relevant projects and programmes of the European Union (Daphne, AGIS and Phare) was reported by Germany, Greece and the United Kingdom of Great Britain and Northern Ireland. In addition, the United Kingdom reported on a separate project funded by the European Union and based on partnerships between member States.

33. Germany and the United Kingdom also noted their cooperation with other international organizations involved in the fight against trafficking in persons (the United Nations Children's Fund (UNICEF), the International Labour Organization and the International Organization for Migration). Particular reference was made by Germany to its support for a UNICEF project for the reintegration of war-affected children in Afghanistan. That Government also mentioned the establishment of a supraregional sector project against trafficking in women aimed at providing assistance and advice to State institutions, as well as non-governmental and intergovernmental organizations.

34. Regional initiatives were reported by Iceland (the Nordic-Baltic Campaign against Trafficking in Women) and Namibia (the Southern African Regional Police Chiefs Cooperation Organization). South Africa pointed to its cooperation with and support for the work of the African Prosecutors Association. Tunisia mentioned its cooperation through the United Nations system with other countries, especially in the field of technical assistance, with a view to preventing and combating trafficking in persons as well as its endeavours to that effect in the framework of the African Union and the League of Arab States.

35. Training activities reported by other countries included exchange of information (Namibia, Spain and Switzerland), training of foreign police officers (Spain), training and upgrading of equipment for border police (Germany), exchange of advice on legislation and operating methods (Namibia), organization of relevant workshops and training seminars (Burkina Faso and Greece), as well as provision of legal assistance (Greece), assistance in normative issues related to trafficking in persons (Ecuador) and various training programmes in countries of origin (Turkey). Finally, the United Kingdom reported on the establishment of a central intelligence unit in Bucharest to focus on organized immigration-related crime in Romania. New Zealand reported on its cooperation with Australia in drafting model provisions for inclusion in legislation against transnational organized crime for Pacific island States. In that context, funding had been provided to legal drafters to work with the Government agencies of those States for the drafting and adoption of relevant implementing laws.

### **III. Concluding remarks**

36. The information provided by States in response to the questionnaire on the implementation of the Trafficking in Persons Protocol demonstrated that in most States action had been undertaken with a view to ensuring the availability of the necessary legislative arsenal to deal with the complex phenomenon of trafficking in persons. However, beyond the existence of a normative anti-trafficking framework

at the national level, further work needs to be done to promote the consistency of national legislative responses with the concepts and requirements of the Protocol. The Conference may wish to consider ways of assisting countries in reviewing or further adjusting and streamlining their legal framework to that effect. In that context, the promotion and enhancement of technical assistance activities, in particular in support of the efforts of developing countries and countries with economies in transition, to build the necessary capacity for fully and consistently incorporating the provisions of the Protocol into their domestic legal systems, should be in the forefront of future action and the relevant work and initiatives of the Secretariat in this field should be further strengthened.

37. The effectiveness of the assistance that the Conference can provide depends to a large extent on the availability, comprehensiveness and accuracy of appropriate information on national programmes, plans and practices, as well as on domestic legislative and administrative measures to implement the Protocol. Consequently, States that have not responded to the questionnaire are called upon to facilitate the work of the Secretariat and to provide the information required by the Conference. States parties to the Protocol, in particular, should recall their reporting obligations under the Convention itself (art. 32, para. 5). The efficiency of the reporting mechanism in support of the function of the Conference can only be ensured when the information available is comprehensive and representative of as many national approaches as possible and not only a portion of them covering less than half the States parties to the Protocol.

38. As this initial review of the implementation of the provisions of the Protocol focuses primarily on the basic adaptation of national laws, in particular their criminalization components, in accordance with the requirements of the Protocol, the information already submitted by States parties will be systematized further and combined with additional material to be received at subsequent stages pursuant to the programme of work of the Conference. It has already been decided that such material will focus on other aspects of national policies and strategies against trafficking in persons, including preventive measures and action to protect victims of trafficking. The utilization of such multifaceted information would enable the Conference to discharge its functions in relation to the implementation of the Protocol in a more efficient manner by assisting States parties to the Protocol to promote a holistic approach to trafficking that would build on a combination of repressive measures against and effective prosecution of traffickers on the one hand and prevention, as well as protection of and assistance to victims of trafficking, on the other.

## Annex

**Status of responses to the questionnaire on the implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: first reporting cycle**

<i>State or regional economic integration organization</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA), accession (a) or succession (d)</i>	<i>Year response received</i>	<i>Year update to response received</i>
<b>Group of African States</b>				
Algeria	6 June 2001	9 Mar. 2004	2006	2008
Angola	-	-	2005	-
Benin	13 Dec. 2000	30 Aug. 2004	2008	-
Botswana	10 Apr. 2002	29 Aug. 2002	-	-
Burkina Faso	15 Dec. 2000	15 May 2002	2008	-
Burundi	14 Dec. 2000	-	-	-
Cameroon	13 Dec. 2000	6 Feb. 2006	2008	-
Cape Verde	13 Dec. 2000	15 July 2004	-	-
Central African Republic	-	6 Oct 2006 (a)	2008	-
Chad	-	-	2008	-
Congo	14 Dec. 2000	-	-	-
Democratic Republic of the Congo	-	28 Oct. 2005 (a)	2008	-
Djibouti	-	20 Apr. 2005 (a)	-	-
Egypt	1 May 2002	5 Mar. 2004	2005	-
Equatorial Guinea	14 Dec. 2000	7 Feb. 2003	-	-
Gambia	14 Dec. 2000	5 May 2003	-	-
Guinea	-	9 Nov. 2004 (a)	2008	-
Guinea-Bissau	14 Dec. 2000	10 Sept. 2007	-	-
Kenya	-	5 Jan. 2005 (a)	-	-
Lesotho	14 Dec. 2000	24 Sept. 2003	-	-
Liberia	-	22 Sept. 2004 (a)	-	-
Libyan Arab Jamahiriya	13 Nov. 2001	24 Sept. 2004	-	-
Madagascar	14 Dec. 2000	15 Sept. 2005	2008	-
Malawi	-	17 Mar. 2005 (a)	-	-

<i>State or regional economic integration organization</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA), accession (a) or succession (d)</i>	<i>Year response received</i>	<i>Year update to response received</i>
Mali	15 Dec. 2000	12 Apr. 2002	-	-
Mauritania	-	22 July 2005 (a)	-	-
Mauritius	-	24 Sept. 2003 (a)	2005	-
Morocco	-	-	-	-
Mozambique	15 Dec. 2000	20 Sept. 2006	-	-
Namibia	13 Dec. 2000	16 Aug. 2002	2005	-
Niger	21 Aug. 2001	30 Sept. 2004	2008	-
Nigeria	13 Dec. 2000	28 June 2001	2005	-
Rwanda	14 Dec. 2000	26 Sept. 2003	-	-
Sao Tome and Principe	-	23 Aug. 2006 (a)	-	-
Senegal	13 Dec. 2000	27 Oct. 2003	2005	-
Seychelles	22 July 2002	22 June 2004	-	-
Sierra Leone	27 Nov. 2001	-	-	-
South Africa	14 Dec. 2000	20 Feb. 2004	2005	2008
Swaziland	8 Jan. 2001	-	-	-
Togo	12 Dec. 2000	-	2008	-
Tunisia	13 Dec. 2000	14 July 2003	2005	-
Uganda	12 Dec. 2000	-	-	-
United Republic of Tanzania	13 Dec. 2000	24 May 2006	2005	-
Zambia	-	24 Apr. 2005 (a)	-	-
Zimbabwe	-	-	-	-
<b>Group of Asian States</b>				
Afghanistan	-	-	2005	-
Bahrain	-	7 June 2004 (a)	2005	-
Cambodia	11 Nov. 2001	2 July 2007	-	-
India	12 Dec. 2002	-	-	-
Indonesia	12 Dec. 2000	-	-	-
Japan	9 Dec. 2002	-	-	-
Kazakhstan	-	31 July 2008 (a)	2005	-
Kiribati	-	15 Sept. 2005 (a)	-	-
Kuwait	-	12 May 2006 (a)	2005	-
Kyrgyzstan	13 Dec. 2000	2 Oct. 2003	-	-
Lao People's Democratic Republic	-	26 Sept. 2003 (a)	-	-
Lebanon	9 Dec. 2002	5 Oct. 2005	-	-
Malaysia	-	-	2005	-

<i>State or regional economic integration organization</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA), accession (a) or succession (d)</i>	<i>Year response received</i>	<i>Year update to response received</i>
Mongolia	-	27 June 2008 (a)	-	-
Myanmar	-	30 Mar. 2004 (a)	2005	-
Nauru	12 Nov. 2001	-	-	-
Oman	-	13 May 2005 (a)	-	-
Philippines	14 Dec. 2000	28 May 2002	2005	-
Republic of Korea	13 Dec. 2000	-	-	-
Saudi Arabia	10 Dec. 2002	20 July 2007	-	-
Sri Lanka	13 Dec. 2000	-	2005	-
Syrian Arab Republic	13 Dec. 2000	-	2005	-
Tajikistan	-	8 July 2002 (a)	2006	-
Thailand	18 Dec. 2001	-	2006	-
Turkmenistan	-	28 Mar. 2005 (a)	-	-
Uzbekistan	28 June 2001	12 Aug. 2008	-	-
<b>Group of Eastern European States</b>				
Albania	12 Dec. 2000	21 Aug. 2002	2006	-
Armenia	15 Nov. 2001	1 July 2003	-	-
Azerbaijan	12 Dec. 2000	30 Oct. 2003	2005	-
Belarus	14 Dec. 2000	25 June 2003	2005	-
Bosnia and Herzegovina	12 Dec. 2000	24 Apr. 2002	2008	-
Bulgaria	13 Dec. 2000	5 Dec. 2001	2005	2008
Croatia	12 Dec. 2000	24 Jan. 2003	2005	2008
Czech Republic	10 Dec. 2002	-	2005	2008
Estonia	20 Sept. 2002	12 May 2004	2005	-
Georgia	13 Dec. 2000	5 Sept. 2006	-	-
Hungary	14 Dec. 2000	22 Dec. 2006	-	-
Latvia	10 Dec. 2002	25 May 2004	2005	-
Lithuania	25 Apr. 2002	23 June 2003	2005	-
Moldova	14 Dec. 2000	16 Sept. 2005	2005	-
Montenegro <sup>a</sup>	-	23 Oct. 2006 (d)	2008	-
Poland	4 Oct. 2001	26 Sept. 2003	2005	2008
Romania	14 Dec. 2000	4 Dec. 2002	2005	-

<sup>a</sup> By its resolution 60/264 of 28 June 2006, the General Assembly admitted the Republic of Montenegro to membership in the United Nations. The response to the questionnaire on the implementation of the Trafficking in Persons Protocol for the first reporting cycle was submitted to the Secretariat before that development and reflected the national position of the former Serbia and Montenegro.

<i>State or regional economic integration organization</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA), accession (a) or succession (d)</i>	<i>Year response received</i>	<i>Year update to response received</i>
Russian Federation	12 Dec. 2000	26 May 2004	2005	-
Serbia	12 Dec. 2000	6 Sept. 2001	2005 <sup>b</sup>	2008 <sup>b</sup>
Slovakia	15 Nov. 2001	21 Sept. 2004	2005	-
Slovenia	15 Nov. 2001	21 May 2004	2008	-
The former Yugoslav Republic of Macedonia	12 Dec. 2000	12 Jan. 2005	2005	-
Ukraine	15 Nov. 2001	21 May 2004	-	-
<b>Group of Latin American and Caribbean States</b>				
Argentina	12 Dec. 2000	19 Nov. 2002	2005	-
Bahamas	9 Apr. 2001	-	-	-
Barbados	26 Sept. 2001	-	-	-
Belize	-	26 Sept. 2003 (a)	-	-
Bolivia	12 Dec. 2000	18 May 2006	-	-
Brazil	12 Dec. 2000	29 Jan. 2004	2005	-
Chile	8 Aug. 2002	29 Nov. 2004	2005	-
Colombia	12 Dec. 2000	4 Aug. 2004	2006	-
Costa Rica	16 Mar. 2001	9 Sept. 2003	2005	-
Dominican Republic	15 Dec. 2000	5 Feb. 2008	2005	-
Ecuador	13 Dec. 2000	17 Sept. 2002	2005	-
El Salvador	15 Aug. 2002	18 Mar. 2004	2005	-
Grenada	-	21 May 2004 (a)	-	-
Guatemala	-	1 Apr. 2004 (a)	2008	-
Guyana	-	14 Sept. 2004 (a)	-	-
Haiti	13 Dec. 2000	-	-	-
Honduras	-	11 Apr. 2008	2005	-
Jamaica	13 Feb. 2002	29 Sept. 2003	2005	-
Mexico	13 Dec. 2000	4 Mar. 2003	2005	-
Nicaragua	-	12 Oct. 2004 (a)	2006	-
Panama	13 Dec. 2000	18 Aug. 2004	2006	-
Paraguay	12 Dec. 2000	22 Sept. 2004	-	-
Peru	14 Dec. 2000	23 Jan. 2002	2005	-
Saint Kitts and Nevis	-	21 May 2004 (a)	-	-

<sup>b</sup> From 3 June 2006, the membership of Serbia and Montenegro in the United Nations was continued by Serbia.

<i>State or regional economic integration organization</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA), accession (a) or succession (d)</i>	<i>Year response received</i>	<i>Year update to response received</i>
Saint Vincent and the Grenadines	20 Nov. 2002	-	-	-
Suriname	-	25 May 2007 (a)	-	-
Trinidad and Tobago	26 Sept. 2001	6 Nov. 2007	-	-
Uruguay	13 Dec. 2000	4 Mar. 2005	-	-
Venezuela (Bolivarian Republic of)	14 Dec. 2000	13 May 2002	-	-
<b>Group of Western European and other States</b>				
Australia	11 Dec. 2002	14 Sept. 2005	2005	-
Austria	12 Dec. 2000	15 Sept. 2005	2005	-
Belgium	12 Dec. 2000	11 Aug. 2004	2005	2008
Canada	14 Dec. 2000	13 May 2002	2005	-
Cyprus	12 Dec. 2000	6 Aug. 2003	2005	-
Denmark	12 Dec. 2000	30 Sept. 2003	-	-
Finland	12 Dec. 2000	7 Sept. 2006 (A)	2005	-
France	12 Dec. 2000	29 Oct. 2002	2005	2008
Germany	12 Dec. 2000	14 June 2006	2007	2008
Greece	13 Dec. 2000	-	2005	-
Iceland	13 Dec. 2000	-	2005	-
Ireland	13 Dec. 2000	-	2005	-
Israel	14 Nov. 2001	23 July 2008	-	-
Italy	12 Dec. 2000	2 Aug. 2006	2005	-
Liechtenstein	14 Mar. 2001	20 Feb. 2008	-	-
Luxembourg	13 Dec. 2000	-	-	-
Malta	14 Dec. 2000	24 Sept. 2003	2005	-
Monaco	13 Dec. 2000	5 June 2001	-	-
Netherlands	12 Dec. 2000	27 July 2005 (A)	2005	-
New Zealand	14 Dec. 2000	19 July 2002	2005	-
Norway	13 Dec. 2000	23 Sept. 2003	2007	-
Portugal	12 Dec. 2000	10 May 2004	2005	-
San Marino	14 Dec. 2000	-	-	-
Spain	13 Dec. 2000	1 Mar. 2002	2005	2008
Sweden	12 Dec. 2000	1 July 2004	2005	2008
Switzerland	2 Apr. 2002	27 Oct. 2006	2005	2008
Turkey	13 Dec. 2000	25 Mar. 2003	2005	-

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<i>State or regional economic integration organization</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA), accession (a) or succession (d)</i>	<i>Year response received</i>	<i>Year update to response received</i>
United Kingdom of Great Britain and Northern Ireland	14 Dec. 2000	9 Feb. 2006	2005	-
United States of America	13 Dec. 2000	3 Nov. 2005	2005	2008
European Community	12 Dec. 2000	6 Sept. 2006 (AA)	-	-

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