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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 international cooperation, with particular emphasis on extradition, mutual legal assistance and international cooperation for the purpose of confiscation, and the establishment and strengthening of central authorities; expert consultation on the protection of victims and witnesses; expert consultation on travel and identity documents

Implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime: consolidated information received from States for the second reporting cycle

Report of the Secretariat

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* CTOC/COP/2008/1.



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I. Introduction

1. By its resolution 55/25 of 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime¹ and two supplementary protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,² and the Protocol against the Smuggling of Migrants by Land, Sea and Air.³ The Migrants Protocol entered into force on 28 January 2004. At its first session, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime included in its programme of work for the second session a consideration of the basic adaptation of national legislation in accordance with the Migrants Protocol (see CTOC/COP/2005/4/Rev.2). At its second session, the Conference decided in its decision 2/4, that the programme of work for its third session would include the following:

(a) Consideration of matters related to protection and assistance measures for smuggled migrants (article 16);

(b) Consideration of matters related to return of smuggled migrants (article 18);

(c) Consideration of matters related to border measures (article 11), security and control of documents (article 12) and legitimacy and validity of documents (article 13).

2. The present report provides an update of the data presented in the analytical report on the implementation of the Migrants Protocol that was submitted to the Conference at its third session. It contains an overview and an analysis of all the replies to the relevant questionnaire and checklist received by the Secretariat (for additional information on the checklist, see CTOC/COP/2008/2)⁴. It also contains information that highlights the progress made towards meeting the requirements set out in the Migrants Protocol and some of the difficulties that States are facing in implementing the provisions. A list of those States whose responses had been received at the time of drafting and that are reflected in 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.

¹ United Nations, *Treaty Series*, vol. 2225, No. 39574.

² *Ibid.*, vol. 2237, No. 39574.

³ *Ibid.*, vol. 2241, No. 39574.

⁴ After the checklist was sent to the States parties and signatories, 10 additional replies and 14 updates were received.

II. Overview of reported national action for the implementation of the Migrants Protocol provisions under consideration

A. Matters related to protection and assistance measures for smuggled migrants

1. Protection of human rights of smuggled migrants

3. Article 16, paragraph 1, of the Migrants Protocol lays down an obligation for States parties to take all appropriate measures to preserve and protect the internationally recognized rights of smuggled migrants, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment. The vast majority of the responding States indicated that legislative or other measures had been adopted domestically to ensure the protection of those rights for smuggled migrants. Only Guinea and Kuwait provided negative responses without any further clarifications. Nigeria provided a negative response but clarified that it was still in the process of issuing implementing legislation. Tunisia's reply to the questionnaire was silent on this issue. Finland indicated that the competent national authority was responsible for assisting victims of trafficking in persons but had no specific responsibilities regarding smuggled migrants. However, Finland also noted that appropriate legislation on general protection of human and basic rights was already in place and could also be applicable to the protection of smuggled migrants. Similarly, the Netherlands and Sweden clarified that specific legislation or other appropriate measures for the preservation and protection of the rights of smuggled migrants had not been adopted, but that such protection was generally provided for in their domestic legal systems. Algeria and Indonesia referred to the ongoing process of enacting national legislation on the smuggling of migrants.

4. The responding States that confirmed the adoption of measures for the protection of the rights of smuggled migrants made reference, first of all, to general principles of international law or relevant international treaties ratified and incorporated into their domestic legal system, including, for example, the International Covenant on Civil and Political Rights,⁵ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,⁶ the International Convention on the Elimination of All Forms of Racial Discrimination,⁷ the Convention relating to the Status of Refugees,⁸ the 1967 Protocol relating to the Status of Refugees,⁹ the Convention for the Protection of Human Rights and Fundamental Freedoms,¹⁰ that Convention as amended by Protocol No. 11,¹¹ and its Protocols No. 1 (concerning protection of property, the right to education and the

⁵ United Nations, *Treaty Series*, vol. 999, No. 14668.

⁶ General Assembly resolution 39/46, annex.

⁷ United Nations, *Treaty Series*, vol. 660, No. 9464.

⁸ *Ibid.*, vol. 189, No. 2545.

⁹ *Ibid.*, vol. 606, No. 8791.

¹⁰ Council of Europe, *European Treaty Series*, No. 5.

¹¹ *Ibid.*, No. 155.

right to free elections),¹² No. 4 (securing certain rights and freedoms other than those already included in the first Protocol thereto)¹³ and No. 6 (concerning the abolition of the death penalty),¹⁴ and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“Protocol of San Salvador”).¹⁵ In the same context, many States referred to their constitutional framework or other domestic legislation geared towards protecting fundamental human rights. Relevant administrative guidelines were mentioned by El Salvador, while Ecuador reported ongoing procedures for the approval of national legislation that would penalize smuggling of migrants resulting in the death or serious injury of those persons. Furthermore, Australia indicated that its Minister for Immigration and Citizenship had discretionary powers under the Migration Act of 1958 that were used to deal with people in extenuating or exceptional circumstances that could not be easily legislated by visa rules.

2. Protective measures for smuggled migrants against potential violence

5. Almost all States confirmed that appropriate measures were in place domestically to afford smuggled migrants protection against violence that might be inflicted upon them by individuals or groups (see art. 16, para. 2, of the Migrants Protocol). Chad, Mauritius and Nigeria provided negative responses, while Ecuador and Guinea did not provide a response on that issue. Portugal also provided a negative response, but indicated that the subject was under discussion in the framework of the revision of the existing legislation. A number of States (Algeria, Australia, Bulgaria, Cameroon, Canada, Czech Republic, Italy, Kuwait, Mauritius, Russian Federation, South Africa, Spain, Sweden, Turkmenistan and United States of America) referred to constitutional provisions or general provisions of domestic legislation on protection against violence. The Netherlands referred generally to measures aimed at providing assistance to all persons whose lives or safety were endangered, while Belgium, Bulgaria and Serbia mentioned their legislation on witness protection. New Zealand quoted specific provisions of its legislation related to the criminalization of the smuggling of migrants and the protection of persons being subject to such conduct. Some States indicated that the protection of smuggled migrants was an important factor for consideration when deciding upon their return and therefore either the deportation order could be issued only when their safety was no longer at risk (Italy and Spain) or, where their lives or safety would be endangered upon return, the right to ask for asylum was made available to them (New Zealand). Poland underlined that no legislative measures related to the protection of the rights of smuggled migrants had been adopted, but, in general terms, an alien could be granted a permit for a “tolerated stay” if potential expulsion might threaten that person’s right to life, freedom and personal safety, expose him or her to torture or inhuman or degrading treatment or punishment or deprive him or her of the right to a fair trial.

¹² Ibid., No. 9.

¹³ Ibid., No. 46. Pursuant to article 4 of the Protocol, the collective expulsion of aliens is prohibited.

¹⁴ Ibid., No. 114.

¹⁵ Organization of American States, *Treaty Series*, No. 69.

3. Assistance measures for smuggled migrants

6. In relation to the provision of appropriate assistance to smuggled migrants whose lives or safety were endangered (see art. 16, para. 3, of the Migrants Protocol), many States provided further information on specific measures adopted at the national level or domestic institutions established to guarantee such assistance. Cameroon, the Central African Republic, Chad, Mauritius, Myanmar and Nigeria provided negative responses to the issue. Myanmar pointed out that specific measures allowing the provision of assistance to smuggled migrants were not yet in place domestically and recognized the need to adopt such measures in the future. Guatemala underlined that it had not established any specific shelters. Cameroon explained that, although general provisions of the penal code were applicable, the protection afforded was still insufficient. Mauritius clarified that some assistance would be provided on the basis of regulations regarding the protection of citizens.

7. Several States reported the availability of temporary shelters and reception centres (Belgium, Bosnia and Herzegovina, Bulgaria, Indonesia, Malaysia, Malta, Netherlands, Norway, Romania, Serbia and Montenegro¹⁶ and Turkey), and some States highlighted the provision of medical and humanitarian assistance (Belgium, Bulgaria, Italy, Romania and Turkey). Belgium and Bulgaria also indicated that smuggled migrants were entitled to free legal aid. Romania underscored that aliens applying for refugee status were afforded legal assistance free of charge and information on related judicial and administrative proceedings. In addition, the provision of social services to ensure social rehabilitation of the smuggled migrants was reported by Latvia. Australia and Latvia referred to educational campaigns to raise awareness on this issue. Many States made reference to relevant agreements or memorandums of understanding with other States, while some of the responses highlighted the cooperation of national authorities with international organizations (see para. 17 below), non-governmental organizations (in Belgium, Bulgaria, Croatia and Romania) or embassies of other States (in Lebanon and Zimbabwe). Finally, the Philippines referred to its “one-country team” approach, wherein different Government agencies cooperate to assist Filipino citizens who find themselves in distress while abroad.

4. Special needs of women and children

8. The vast majority of the responding States indicated that, in implementing protection and assistance measures for smuggled migrants, their competent national authorities took into account the special needs of women and children (in line with art. 16, para. 4, of the Migrants Protocol). However, Cameroon explained that the law it had passed in 2005 did not afford sufficient protection to children. It also

¹⁶ Following the Declaration of Independence by the National Assembly of Montenegro on 3 June 2006, the President of the Republic of Serbia notified the Secretary-General that the membership of the state union of Serbia and Montenegro in the United Nations, including all organs and organizations of the United Nations system, was continued by the Republic of Serbia, which remained responsible in full for all the rights and obligations of the state union Serbia and Montenegro under the Charter of the United Nations. 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 Migrants Protocol for the second reporting cycle was submitted to the Secretariat before those developments and reflected the national position of the former state union Serbia and Montenegro.

noted that the special needs of women were addressed only through general provisions that were not specifically designed for migrants. South Africa provided a negative response clarifying that special protective measures for such vulnerable groups were mainly an issue for international and non-governmental organizations. Finland pointed out that there was no ad hoc legislation to address the special needs of vulnerable smuggled migrants, but further added that the protection of women and children was generally ensured under its national legislation. Ecuador reported that specific protective measures were under development.

9. Among the States that reported on their relevant legislative framework, Canada highlighted the gender-based approach of its immigration and refugee legislation, whereas Bulgaria and Latvia referred to their domestic legislation on protection of children. The Philippines explained that the protection and support afforded to women and children by the Anti-Trafficking in Persons Act of 2003 also afforded protection to smuggled women and children. Administrative guidelines were cited by Australia. A number of States reported on specific measures aimed at ensuring the protection of women and children found in groups of smuggled migrants. In that context, they indicated that separate reception and accommodation centres were made available as a means of giving special protection to women and that priority was accorded to placing minors with their parents or legal guardians or, if necessary, in special premises (Belgium, Croatia, Czech Republic, Lebanon, Malta, New Zealand, Romania, Turkey and United States). Paying attention to the special needs of unaccompanied minors was further reported by Belgium, Croatia, Guatemala, Lebanon, Tunisia and United States. Some of the national replies focused on the provision, where necessary, of medical and psychological assistance (Algeria, Czech Republic, Thailand and Turkey). Other States underlined the close cooperation between law enforcement authorities and different social security organizations (Norway) or the existence of specialized institutions for the protection of women and children (El Salvador, Indonesia and Mauritius). Slovenia put emphasis on the special care given to prevent the repeated victimization and further exploitation of such persons. The former Yugoslav Republic of Macedonia stated that in cases where minors were called upon to testify as witnesses in relevant proceedings, the presence of a psychologist or an education professional was mandatory.

5. Notification to and communication with consular officers

10. Almost all responding States emphasized that their national practices regarding the obligation to inform smuggled migrants under detention without delay about their right to communicate with consular officers were in compliance with the relevant provisions of the Vienna Convention on Consular Relations¹⁷ (see art. 16, para. 5, of the Migrants Protocol).

11. In particular, many States (Canada, Croatia, Czech Republic, Sweden, the former Yugoslav Republic of Macedonia and United States) referred to their domestic legislation implementing article 36 of the Vienna Convention. Other States reported on the provisions of their immigration legislation (Estonia, Latvia, Mexico, New Zealand, Philippines, Russian Federation, Slovakia, Spain and Zimbabwe) or made reference to national practices facilitating the contact and communication with

¹⁷ United Nations, *Treaty Series*, vol. 596, No. 8638.

consular officers and/or further enabling the provision of legal aid and translation services at the request of the persons concerned (Algeria, Slovenia and South Africa). The Czech Republic referred to the right of a detained alien to submit requests for the facilitation of contacts with relevant international organizations. Slovakia proposed, as an alternative, informing the ministry of foreign affairs of the respective State in cases in which an embassy of that State did not exist in its national territory. While some of the responding States clarified that the notification of the consular officers was, in accordance with article 36 (b) of the Vienna Convention, subject to the request of the smuggled migrants (Croatia, Germany and Norway) or at least the lack of any written objection by them (Turkey), the United Kingdom of Great Britain and Northern Ireland reported that the obligation to notify consular representatives existed even if the detainee had not submitted a relevant request. Croatia further noted that in cases involving minors, the consular representatives were notified without delay and regardless of a prior request. Malta indicated that all immigrants could seek the assistance of their consular representatives but that the vast majority refused to do so since they usually requested asylum shortly after arriving.

B. Matters related to the return of smuggled migrants

1. Measures to facilitate and accept the return of smuggled migrants

12. Member States were requested to provide information on the measures adopted by them to facilitate and accept without undue or unreasonable delay the return of smuggled migrants who were their nationals or who had the right of permanent residence in their territory at the time of return (see art. 18, para. 1, of the Migrants Protocol). In response to that request, all States confirmed the adoption of such measures.

13. Most of the responding States made reference to bilateral or multilateral agreements on readmission or other international agreements as a vehicle to facilitate and accept the return of smuggled migrants to their respective State of origin (Bosnia and Herzegovina, Bulgaria, Ecuador, Germany, Latvia, Malta, Romania, Serbia and Montenegro,¹⁶ Slovenia and the former Yugoslav Republic of Macedonia). Italy pointed out that, in the absence of relevant bilateral treaties, the mutual legal assistance mechanisms could also be used for that purpose. Estonia highlighted that the readmission of nationals of third countries with which no treaty relations existed could be carried out on a case-by-case basis after considering all the circumstances. Other States mentioned as a legal basis for the return their constitutional provisions (Bulgaria, New Zealand, Nigeria and Russian Federation), their domestic legislation (Kuwait, Morocco, New Zealand, South Africa, Spain, Sweden and Zimbabwe) and their immigration and refugee legislation (Canada, El Salvador and Malaysia). National practices facilitating return were also reported (Algeria and Slovenia), including the identification of competent authorities and agencies (Norway). A number of States indicated that the return process was carried out through, or with the assistance of, the respective embassies and consulates (Azerbaijan, Mexico, Myanmar and Turkmenistan) and specialized non-governmental organizations (Belgium). Malta and the Netherlands noted that their national authorities did facilitate such a process, but in relation to the acceptance of smuggled migrants no reported events existed, as they were receiving

States and not States of origin. Finally, Thailand and Tunisia focused on the time frame of the return and underlined that they facilitated the readmission without undue delay after reviewing the validity of documents that demonstrated the status of the persons concerned.

14. Member States were also asked to provide feedback on whether appropriate measures were in place to facilitate and accept the return of smuggled migrants who had the right of permanent residence in their territory at the time of entry into the receiving State (art. 18, para. 2, of the Migrants Protocol). Again, the vast majority of the States that responded to the questionnaire indicated that such measures had been adopted domestically. Finland, Guinea, Morocco and Myanmar did not report on this issue. Turkmenistan clarified that its national authorities would facilitate the return in accordance with national legislation and international agreements, but no specific cases had yet been registered. The normative framework of relevant readmission agreements was again identified as a legal basis for return (Belgium, Bulgaria, Malta, Romania, Slovenia and the former Yugoslav Republic of Macedonia). The existence of enabling domestic legislation was reported by Malaysia, New Zealand and Tunisia. Australia, Croatia, Germany, the Philippines, Romania, the Russian Federation and Sweden underscored that they accepted smuggled migrants who had the right of permanent residence in their territory if the residence permit was still valid. Estonia pointed out that persons with no legal basis to establish the right of permanent residence might be readmitted, if evidence was furnished that they were previously linked to the State (previous stays, relatives and expired residence permit or visa). A certain condition reported by Thailand was whether or not the documents identifying the right to permanent residence were complete. Turkey stated that its authorities generally facilitated and accepted the return, if they were notified within a reasonable time after the entry of the migrants to the other State. The United States clarified that the returned persons were still subject to immigration provisions, which might make them removable under other applicable provisions. Finally, Mexico and Peru highlighted the competence of consular authorities on this issue.

15. Almost all States confirmed that their competent authorities enabled the verification of the nationality or right of permanent residence of the smuggled migrants upon request of the receiving State (see art. 18, para. 3, of the Migrants Protocol). The Central African Republic provided a negative response. Finland, Guinea, Kuwait and Tunisia did not provide a response on this matter. Sweden clarified that there was no obligation under domestic legislation to carry out such verification, but its authorities would comply with a relevant request from another State party. A number of States reported on existing readmission agreements or arrangements that established an obligation to verify (Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia and Turkey), while New Zealand and Nigeria referred to their domestic immigration and mutual legal assistance legislation. The Czech Republic provided detailed information on domestic regulations governing the transfer of information to other States. Bulgaria, Thailand and Tunisia highlighted the involvement of diplomatic and consular authorities in the relevant process, while Myanmar, Norway and the Philippines identified the competent national authorities to carry out the verification. The United States, although a destination State, confirmed that its authorities enabled such verification at the request of its nationals or permanent residents.

16. Member States were further requested to provide information on existing measures aimed at facilitating the return of smuggled migrants who were without proper documentation. The specific question raised was whether the competent national authorities were obliged to issue, at the request of the receiving State, such travel documents or other authorization as might be necessary to enable the persons to travel and re-enter the territory of their respective States of origin (see art. 18, para. 4, of the Protocol). The Central African Republic provided a negative response, pointing out that no domestic regulation existed on this issue. Finland, Kazakhstan, Kuwait and Morocco did not provide a response. In relation to the legal framework used to address this practical issue, New Zealand quoted the relevant provisions of its domestic legislation, while Algeria referred to bilateral consular and deportation agreements. Several States stressed that in such cases the smuggled migrants were provided with temporary identity or travel documents facilitating the repatriation process (Indonesia, Latvia, Nigeria, Peru, Romania, Slovakia, Spain, Sweden and Thailand). Other States underlined the cooperation with embassies and consulates for the issuance of the proper documentation (Lebanon, Mauritius, Mexico, Myanmar, Nigeria, Philippines, Serbia and Montenegro,¹⁶ Slovakia, Turkey and Zimbabwe). Bosnia and Herzegovina, South Africa and Turkey confirmed the facilitation of the return under such circumstances, on the condition that the nationality or status of smuggled migrants without proper documentation had first been verified. The Netherlands reported that its domestic authorities were obliged to issue travel documents or any other kind of authorization even prior to receiving a relevant application, as the Netherlands was a receiving State and not a State of origin. The United States pointed out that, although it could not issue travel documents or any other kind of authorization at the request of another State, it could do so at the request of nationals and permanent residents who had been victimized, in order to enable them to enter the country. With regard to the time frame needed to complete the relevant process, Germany reported that this was subject to the comprehensiveness and accuracy of the necessary applications, as well as the complexity of the individual case. Turkey put emphasis on the efficiency of its domestic mechanism, which addressed related issues in a timely manner.

2. Measures to carry out the return of smuggled migrants

17. States were called upon to provide input on any measures that had been adopted at the domestic level to carry out the return of smuggled migrants in an orderly manner and with due regard to the safety and dignity of smuggled migrants (see art. 18, para. 5, of the Migrants Protocol). The vast majority of the national responses included information on such measures, only Azerbaijan, Cameroon, Chad, Guinea and Morocco did not answer at all. Furthermore, Portugal and Zimbabwe reported that national legislation on this issue was not yet in place.

18. Most of the responding States reported that appropriate consideration was given to treating the migrants with dignity and care and carrying out the return process in a safe and humane manner, even where specific rules for the return of smuggled migrants did not exist, as was the case with Finland and the Netherlands. In some national replies, reference was made to relevant domestic legislation (Croatia, Kuwait, New Zealand and United States) or ad hoc removal and travel arrangements to facilitate the return (Canada). A number of States highlighted the availability of temporary accommodation and assistance centres to ensure the safety and protection of smuggled migrants (Belgium, Bulgaria, Italy and South Africa),

the facilitation of contacts with consulates (Ecuador, El Salvador and South Africa) and the safeguarding of the best interests of minors (Canada and Ecuador) and women (Ecuador). Finland and Sweden reported that they encouraged the voluntary return of smuggled migrants and Australia and Switzerland declared that they would offer reintegration assistance if migrants requested to return. In some other cases, the necessary costs for the transportation to the destination State were covered by the receiving State (Czech Republic, Sweden and Turkey). Serbia and Montenegro¹⁶ mentioned that the return might take place either through a voluntary programme supported by the International Organization for Migration (IOM), or by directly transferring the illegal migrants to the State of origin in accordance with readmission agreements. It was further reported that the presence of escorting officers throughout the return process was subject to whether or not such return was enforced (Serbia and Montenegro¹⁶ and Sweden) or required for security reasons (Germany). Romania underlined the existence of specialized personnel at all cross-border points for the identification of smuggled migrants and the provision of further assistance to them. Germany referred to special training on intercultural skills and conflict management for law enforcement officers escorting foreigners required to leave the country. The establishment of a mechanism to ensure better coordination and collaboration with foreign counterparts was reported by the United States.

3. Cooperation with international organizations and existing international agreements or arrangements

19. Most of the responding States reported that their competent authorities had cooperated with relevant international organizations in implementing measures to carry out the return of smuggled migrants (see art. 18, para. 6, of the Migrants Protocol). Azerbaijan, Guinea, Morocco, Nigeria and Tunisia did not provide any answers, while Chad, Malaysia, Portugal and the former Yugoslav Republic of Macedonia provided negative responses. In that context, many States highlighted their cooperation with IOM (Australia, Belgium, Bosnia and Herzegovina, Croatia, Finland, Germany, Guatemala, Indonesia, Italy, Latvia, Lebanon, Malta, Mexico, Netherlands, Norway, Philippines, Romania, Serbia and Montenegro,¹⁶ Slovakia, Slovenia, South Africa, Spain, Sweden, Thailand, Turkey, Turkmenistan and United Kingdom), the Office of the United Nations High Commissioner for Refugees (UNHCR) (Bulgaria, Cameroon, Croatia, Finland, Indonesia, Lebanon, Netherlands, Romania, Slovenia, Spain and Turkey), the International Committee of the Red Cross (Cameroon, Kuwait, Romania and Turkey), the International Labour Organization (Thailand), the International Centre for Migration Policy Development (ICMPD) (Croatia and Lebanon), the Bulgarian Helsinki Committee of the International Helsinki Federation for the Protection of Human Rights (Bulgaria) and Lawyers for Human Rights and other human rights organizations (South Africa). The Czech Republic provided more specific information regarding the cooperation that its domestic authorities had established with IOM, highlighting an agreement with that organization on the voluntary return of migrants whose application for asylum had been unsuccessful and of illegal migrants. Similarly, Croatia clarified that its cooperation with ICMPD was geared towards organizing joint seminars, meetings and projects to protect the rights of foreigners in the context of their return to the State of origin. Furthermore, Canada indicated that in cases of detention of illegal migrants in the country, cooperation with international organizations such as

UNHCR was aimed at monitoring the conditions of detention. Algeria made reference to consultation and information exchange mechanisms within the framework of the African Union. Zimbabwe reported on existing cooperation mechanisms in the context of the Southern African Regional Police Chiefs Cooperation Organization, an official forum comprising all the police chiefs from Southern Africa. Mauritius referred to cooperation with the International Criminal Police Organization (INTERPOL) to update relevant information, as well as collaboration, including information-sharing, with neighbouring States through the Indian Ocean Commission. New Zealand confirmed its cooperation with many international organizations and agencies, but also stated that if the persons concerned had knowingly been smuggled into national territory in breach of the law, they were required to be returned as soon as possible, unless there were compelling medical or humanitarian reasons for allowing them to remain in the country. A number of States also underscored the cooperation of national authorities with specialized non-governmental organizations (Belgium, Bulgaria, Romania, Spain and Turkey).

20. The majority of the national replies further confirmed the conclusion of bilateral or multilateral agreements or arrangements governing, in whole or in part, the return of smuggled migrants (see art. 18, para. 8, of the Migrants Protocol). Belgium, the Central African Republic, Chad, Madagascar, Malaysia, Portugal, South Africa, Switzerland and the United Kingdom provided negative responses. Madagascar indicated that best practice guidelines would be needed on this matter. Myanmar indicated that repatriation arrangements were made on a case-by-case basis. New Zealand reported that no relevant agreements were in place to regulate the return of illegal migrants, as the national legislation did not require prior agreement to that effect. However, New Zealand clarified that appropriate consideration would be given to the conclusion of such agreements where other jurisdictions would require it.

21. In specifying the nature and scope of existing agreements or arrangements, a number of States referred to readmission agreements facilitating the return of smuggled migrants (Australia, Bulgaria, Croatia, El Salvador, Finland, Guatemala, Kuwait, Lebanon, Nigeria, Philippines, Russian Federation, Serbia and Montenegro,¹⁶ Slovakia, Slovenia, Spain, Sweden and the former Yugoslav Republic of Macedonia), general agreements regarding the removal of foreign nationals, which were also applicable to the return of smuggled migrants (Canada, Czech Republic and Germany), bilateral deportation agreements (Algeria) and agreements on “security cooperation” (Turkey). Guatemala recalled the readmission agreement signed with El Salvador, Honduras, Mexico and Nicaragua in the framework of the Regional Conference on Migration (Puebla Process). Mauritius referred to cooperation agreements concluded within the Commonwealth Secretariat, the Southern African Development Community and the Common Market of Eastern and Southern Africa. The Russian Federation mentioned the cooperation established through the Commonwealth of Independent States with the aim of combating illegal migration. Thailand made reference to ad hoc memorandums of understanding with neighbouring States. The United States reported the existence of agreements with certain States governing the return of their nationals or former nationals regardless of how they entered the country (lawfully or unlawfully).

4. General remarks

22. Taking into account the national practices reported by the responding States in this particular field, the Conference of the Parties may wish to focus its attention on the need to further improve and promote cooperation between States parties to the Migrants Protocol, including through appropriate training of competent officers, to ensure that the return of smuggled migrants is carried out in an orderly manner and with due regard for the safety and dignity of the migrants. In that connection, it should be recalled that the Protocol includes a broad saving clause to the effect that nothing shall affect the rights, obligations and responsibilities of States and individuals under international law, including international human rights law and, in particular, refugee law and the principle of non-refoulement. Furthermore, the measures set forth in the Protocol are not to be interpreted and applied in a way that is discriminatory to persons on the ground that they are smuggled migrants (see art. 19 of the Migrants Protocol).

23. In reviewing the implementation of article 18 at the national level, the Conference may also wish to take into account the fact that article 19 of the Protocol is based on the understanding that States parties would not deprive persons of their nationality contrary to international law, thereby rendering them stateless.¹⁸

C. Matters related to border measures, security and control of documents and legitimacy and validity of documents

1. Commercial carriers' liability

24. In relation to any legislative or other appropriate measures to prevent means of transport operated by commercial carriers from being used in the commission of the offence of smuggling of migrants (see art. 11, para. 2, of the Migrants Protocol), the vast majority of responding States provided similar information to that related to the implementation of the Trafficking in Persons Protocol (see CTOC/COP/2006/6/Rev.1). Ecuador reported that, despite efforts to control migration strictly, no measures had been adopted at the national level and further pointed out that Ecuador was still considered as a point of departure for smuggling of migrants. The Central African Republic and Nigeria answered in the negative. Azerbaijan, Kazakhstan and Kuwait did not reply on that issue. Finland, Slovakia and Spain reported that they had introduced financial penalties against carriers who violated laws regarding the transportation of illegal migrants. Indonesia indicated that relevant legislation was pending. A number of States referred to specific measures concerning commercial carriers using road transportation, citing the difficulty to monitor the flow of traffic, in particular in States with long or porous borders. Cameroon explained that carriers were required to examine the documents of all passengers and to report any suspicious behaviour. El Salvador referred to measures aimed at ensuring greater control over buses crossing international boundaries, including through inspections at borders and along domestic roads, as well as by establishing liability for carriers and drivers. Similarly, Turkey referred to

¹⁸ See the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), Part three, Protocol against the Smuggling of Migrants by Land, Sea and Air, article 18, interpretative note (a).

specific regulations governing transport by road, with penalties such as the cancellation of permits for three years for carriers convicted of smuggling migrants. The United States reported the adoption of a series of legislative and regulatory measures, including bilateral arrangements on pre-inspection of documents.

2. Border control measures

25. Almost all responding States replied that they had strengthened border measures in order to prevent and detect the smuggling of migrants (see art. 11, para. 1, of the Migrants Protocol). Some cited numerous difficulties in implementing general and specific mechanisms to prevent and detect smuggling. Among general measures, a number of States referred to bilateral cooperation with neighbouring States. For example, Spain referred to joint patrolling teams and the United Kingdom highlighted the cooperation of its national authorities with their counterparts from France in the context of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). Most States referred to increased patrols and checks at border points and crossings and training programmes for border control agents. Australia emphasized the improvement in the capabilities of its customs (including Coastwatch) and navy to search, detect, pursue and intercept boats carrying people who are not authorized to enter Australia. It also referred to its Border Protection Act 2001, which allows vessels to be searched in international waters if they are suspected of smuggling migrants. Malaysia underlined the establishment of an anti-smuggling unit consisting of police, immigration and customs officers responsible for patrolling borders. El Salvador made reference to specific instructions given to border agents to detect smuggling of minors, while Estonia stated that border agents could refuse entry if the reason given was unclear. Thailand underlined the critical situation of national border control owing to lack of funding and personnel. Guinea reported that it was currently receiving assistance from IOM to strengthen its border control capacity. A number of States also reported specific technical means to increase effective controls at borders (Croatia, Peru, Serbia and Montenegro,¹⁶ South Africa, Turkey, United States and Zimbabwe). Croatia and South Africa indicated that they were investing in equipment for the physical detection of smuggled migrants, while the Philippines was implementing skills and competency training programmes for all inspection levels in order to detect all fraudulent documents. Turkey reported the establishment of laboratories at border points for testing documents that were suspected of having been forged.

26. Most States indicated that their legislation or regulations provided for the denial of entry or revocation of visas of persons implicated in the commission of offences related to the smuggling of migrants (see art. 11, para. 5, of the Migrants Protocol). Most States indicated that legislative and regulatory measures enabled the relevant authorities to revoke visas or refuse entry into their national territory on the basis of prior criminal convictions, although not necessarily specifically for smuggling of migrants (Canada, Germany, Myanmar, New Zealand, Slovakia, Slovenia, Thailand, Tunisia, Turkey and Zimbabwe), upon suspicion that the person was a participant in an organized criminal group or would commit an offence once in the country, or on other grounds such as constituting a threat to safety and public order. Legislation in Bulgaria allowed for a person to be denied a visa or entry into the country if there was any indication that he or she had been involved in trafficking in persons. The Philippines added that its immigration act

of 1960 (CA 613) authorized the deportation of foreigners involved in the commission of an offence related to illegal migration. Several States also reported that they referred to databases for determining whether a suspected person had been detected (Algeria, Bulgaria, Myanmar, Slovakia and Spain). In that respect, Bulgaria cited the establishment of an information database on persons who had previously been denied visas. Kuwait further indicated that foreigners who had been previously deported from the country could not return, except under special permission.

27. The information received from responding States on issues related to border control measures could further be considered in conjunction with the national replies regarding the implementation of article 11, paragraph 1, of the Trafficking in Persons Protocol (see CTOC/COP/2006/6/Rev.1).

3. Cooperation with border control authorities of other States

28. Almost all responding States reported various measures aimed at strengthening cooperation with the border control agencies of other States parties, including through the establishment and maintenance of direct channels of communication (see art. 11, para. 6, of the Migrants Protocol). Most States indicated the existence of specific bilateral or regional cooperation mechanisms. For example, Slovakia had signed bilateral agreements on cooperation and mutual assistance on border matters with all of its neighbouring countries. Moreover, Cameroon, Tunisia and Turkey reported on cooperative efforts with INTERPOL. Many States reported the establishment of direct channels of communication between their border control authorities (Australia, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Kuwait, Malta, Mexico, Myanmar, Philippines, Romania, Serbia and Montenegro,¹⁶ Thailand and Turkmenistan). Mexico referred to the Advanced Passenger Information System as a mechanism for special control and border cooperation with neighbouring States, in particular the United States. Romania reported bilateral cooperation with its neighbouring States involving exchange of operational intelligence and joint patrol teams. Turkey cited a programme for cooperation between the coast guards of Black Sea States to improve patrolling and increase training and cooperation among agents. Australia underscored that it had assigned a network of specialist compliance officers to posts in 19 countries to work with local police and immigration officials to identify and report on the activities of people involved in the smuggling of migrants.

29. The information received from responding States on issues related to border control cooperation with other States could further be considered in conjunction with the national replies regarding the implementation of article 27 of the Organized Crime Convention on law enforcement cooperation (see CTOC/COP/2006/2/Rev.1), as well as the implementation of article 11, paragraph 6, of the Trafficking in Persons Protocol (see CTOC/COP/2006/6/Rev.1).

D. Matters related to the security and control, as well as legitimacy and validity, of documents

1. Security and control of documents

30. States were asked to provide information on existing measures to ensure the integrity and security of travel or identity documents issued by their competent authorities (see art. 12 of the Migrants Protocol). All responding States confirmed the adoption of such measures, except for Ecuador, which provided a negative response because of a lack of funds and personnel for the effective control of documents. Azerbaijan, Guinea, Malta and Nigeria did not provide responses on the matter. Among the measures reported were the adoption of security standards for the issuance of documents, the centralization of issuing authorities and the development and improvement of mechanisms for checking the integrity and validity of documents. Algeria reported the criminalization of forgery of travel or identity documents, as well as the establishment of a specific offence under civil aviation law for negligence in controlling travel documents. Many countries reported the introduction of new passports that included biometric indicators to authenticate the identity of the passport holder. Latvia, Slovakia and Spain underlined their compliance with European Union security requirements. Croatia referred to specific training programmes for police officers in charge of detecting forgery. Peru mentioned the establishment of a computer-based system to check the integrity of passports with a scanner. The United States reported the adoption of a number of security features for documents issued by national authorities, as well as the regular updating of technologies used to personalize machine-readable travel documents. The United States also highlighted its commitment to strengthening cooperation with other States to improve the integrity and security of all identification documents, including through the conclusion of data-sharing agreements or arrangements.

31. In taking stock of the information provided by the responding States on the security and control of documents, the Conference of the Parties may wish to consider further the information made available during its first reporting cycle regarding the establishment at the domestic level of offences related to travel or identity documents used for the purpose of facilitating the smuggling of migrants (see CTOC/COP/2005/4/Rev.2).

32. In future, the Conference may also wish to utilize additional information resulting from a study on fraud and the criminal misuse and falsification of identity and related crimes currently being prepared by the Secretariat in accordance with Economic and Social Council resolution 2004/26 of 21 July 2004.

2. Legitimacy and validity of documents

33. The vast majority of responding States stated that their competent authorities verified, at the request of another State, the legitimacy and validity of travel or identity documents suspected of being used for smuggling migrants (see art. 13 of the Migrants Protocol). Canada, Portugal and Sweden provided negative responses, but explained that, while they had no specific obligation to proceed with such verification, they nevertheless did carry it out within the framework of general cooperation. Chad also responded negatively, while Azerbaijan, Guinea, Kazakhstan,

Morocco and Nigeria did not respond. Most States reported that their consular or immigration authorities were tasked with such verification, while the use of INTERPOL mechanisms to that effect was also mentioned. El Salvador noted that carrying out such verification sometimes led to delays in the process of repatriation.

34. The information received from responding States on issues related to the legitimacy and validity of documents could further be considered in conjunction with the national replies regarding the implementation of article 13 of the Trafficking in Persons Protocol (see CTOC/COP/2006/6/Rev.1).

III. Concluding remarks

35. The overview presented above demonstrates that the majority of States parties to the Migrants Protocol that responded to the questionnaire already had in place or had adopted measures to implement the provisions under consideration (art. 11-13, 16 and 18 of the Migrants Protocol). Some States reported shortcomings and requested assistance to address them. The Conference and, in particular, the Open-ended Interim Working Group of Government Experts on Technical Assistance, may wish to further consider ways and means of addressing the individual needs of States. The Conference may specifically wish to discuss mechanisms to assist States parties in reporting adequately to the Secretariat in order to effectively identify needs and develop tailor-made technical support.

Annex

Status of responses to the questionnaire on the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime: second reporting cycle

<i>State or regional economic integration organization</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA) or accession (a)</i>	<i>Year responses received</i>	<i>Year update to responses received</i>
Algeria	6 June 2001	9 Mar. 2004	2006	2008
Australia	21 Dec. 2001	27 May 2004	2006	-
Azerbaijan	12 Dec. 2000	30 Oct. 2003	2006	-
Belgium	12 Dec. 2000	11 Aug. 2004	2008	-
Bosnia and Herzegovina	12 Dec. 2000	24 Apr. 2002	2008	-
Bulgaria	13 Dec. 2000	5 Dec. 2001	2006	2008
Cameroon	13 Dec. 2000	6 Feb. 2006	2008	-
Canada	14 Dec. 2000	13 May 2002	2006	-
Central African Republic	-	6 Oct. 2006 (a)	2008	-
Chad	-	-	2008	-
Croatia	12 Dec. 2000	24 Jan. 2003	2006	2008
Czech Republic	10 Dec. 2002	-	2006	2008
Ecuador	13 Dec. 2000	17 Sept. 2002	2006	-
El Salvador	15 Aug. 2002	18 Mar. 2004	2006	-
Estonia	20 Sept. 2002	12 May 2004	2006	2008
Finland	12 Dec. 2000	7 Sept. 2006 (A)	2006	2008
Germany	12 Dec. 2000	14 June 2006	2006	2008
Grenada	-	21 May 2004 (a)	2006	-
Guatemala	-	1 Apr. 2004 (a)	2008	-
Guinea	-	8 June 2005 (a)	2008	-
Honduras	-	-	2006	-
Indonesia	12 Dec. 2000	-	2006	-
Italy	12 Dec. 2000	2 Aug. 2006	2006	-
Kazakhstan	-	31 July 2008 (a)	2006	-
Kuwait	-	12 May 2006 (a)	2006	-
Latvia	10 Dec. 2002	23 Apr. 2003	2006, 2007	-
Lebanon	26 Sept. 2002	5 Oct. 2005	2006	-
Madagascar	14 Dec. 2000	15 Sept. 2005	2008	-
Malaysia	-	-	2006	-
Malta	14 Dec. 2000	24 Sept. 2003	2006	-

<i>State or regional economic integration organization</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA) or accession (a)</i>	<i>Year responses received</i>	<i>Year update to responses received</i>
Mauritius	-	24 Sept. 2003 (a)	2006	2008
Mexico	13 Dec. 2000	4 Mar. 2003	2006, 2007	-
Monaco	13 Dec. 2000	5 June 2001	2006	-
Morocco	-	-	2006, 2007	-
Myanmar	-	30 Mar. 2004 (a)	2006	-
Netherlands	12 Dec. 2000	27 July 2005 (A)	2006	-
New Zealand	14 Dec. 2000	19 July 2002	2006	-
Nigeria	13 Dec. 2000	27 Sept. 2001	2006	-
Norway	13 Dec. 2000	23 Sept. 2003	2006	-
Peru	14 Dec. 2000	23 Jan. 2002	2006	-
Philippines	14 Dec. 2000	28 May 2002	2008	-
Poland	4 Oct. 2001	26 Sept. 2003	2006	2008
Portugal	12 Dec. 2000	10 May 2004	2006	-
Republic of Moldova	14 Dec. 2000	16 Sept. 2005	2008	-
Romania	14 Dec. 2000	4 Dec. 2002	2006	-
Russian Federation	12 Dec. 2000	26 May 2004	2006	-
Serbia	12 Dec. 2000	6 Sept. 2001	2006 ^a	2008
Slovakia	15 Nov. 2001	21 Sept. 2004	2006	2008
Slovenia	15 Nov. 2001	21 May 2004	2006	-
South Africa	14 Dec. 2000	20 Feb. 2004	2006	-
Spain	13 Dec. 2000	1 Mar. 2002	2006	2008
Sweden	12 Dec. 2000	6 Sept. 2006	2006	2008
Switzerland	2 Apr. 2002	27 Oct. 2006	2008	2008
Thailand	18 Dec. 2001	-	2006	-
The former Yugoslav Republic of Macedonia	12 Dec. 2000	12 Jan. 2005	2006	-
Tunisia	13 Dec. 2000	14 July 2003	2006	-
Turkey	13 Dec. 2000	25 Mar. 2003	2006	-
Turkmenistan	-	28 Mar. 2005 (a)	2006	-
United Kingdom of Great Britain and Northern Ireland	14 Dec. 2000	9 Feb. 2006	2006	-
United States of America	13 Dec. 2000	3 Nov. 2005	2006	2008
Zimbabwe	-	-	2006	-
European Community	12 Dec. 2000	6 Sept. 2006 (AA)	2006	-

^a From 3 June 2006, the membership of Serbia and Montenegro in the United Nations was continued by Serbia.