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## **Working Group on the Smuggling of Migrants**

Vienna, 18-20 November 2015

Item 2 of the provisional agenda\*

**Smuggling of migrants by sea**

### **Report on the Trans-regional Training Workshop on Preventing and Combating the Smuggling of Migrants by Sea in Mexico, Central America and the Caribbean**

**Non-paper submitted by the United States of America\*\***

#### **I. Objective**

1. The United Nations Office on Drugs and Crime (UNODC) hold the first regional training workshop to prevent and combat the smuggling of migrants (SOM) by sea for the Mexico, Central American and the Caribbean region, from 24 to 26 March, 2015 in Panama City. This pilot workshop was meant to be the first of a series of regional workshops on smuggling of migrants by sea. Mexico, Central America and the Caribbean was the first region to benefit from this workshop.<sup>1</sup>
2. The Regional Training Workshop aimed at identifying challenges in the response to smuggling of migrants by sea, sharing good practices, as well as discussing the way forward to enhance the response of authorities to the increasing involvement of organized crime in migrant smuggling to improve the protection of smuggled migrants at sea.
3. The Regional Training Workshop raised awareness on the international requirements at sea that are of concern in migrant smuggling ventures as well as trained participants on investigating smuggling of migrants while upholding the rights of the migrants.

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\* CTOC/COP/WG.7/2015/1.

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[www.unodec.org/ropan/en/HumanTrafficking/reports-of-the-regional-workshop-to-address-smuggling-of-migrants-som-by-sea-in-mexico-central-america-and-the-caribbean.html](http://www.unodec.org/ropan/en/HumanTrafficking/reports-of-the-regional-workshop-to-address-smuggling-of-migrants-som-by-sea-in-mexico-central-america-and-the-caribbean.html).

<sup>1</sup> [www.unodec.org/ropan/en/IndexArticles/Trata\\_de\\_Personas/March2015/smuggling-of-migrants-regional-workshop.html](http://www.unodec.org/ropan/en/IndexArticles/Trata_de_Personas/March2015/smuggling-of-migrants-regional-workshop.html).



4. With the financial support of the Department of State of the United States of America, this Regional Training Workshop was jointly organized by UNODC's Global Programmes against the Smuggling of Migrants and on Maritime Crime, within the framework of the Regional Programme for Central America and the Caribbean and in collaboration with the UNODC Liaison and Partnership Office in Mexico.

5. The Panama government was associated with the organization of the workshop that gathered 38 front line officers, criminal justice officers and policy makers from The Bahamas, the Dominican Republic, Haiti, Honduras, Jamaica, Mexico and Panama.

6. It was delivered by experts of the Human Trafficking and Migrant Smuggling Section and of the Global Maritime Crime Programme, together with resource persons from the Mexico and the Panama Offices, a United States Coast Guard, an Italian Prosecutor and the United Nations High Commissioner for Refugees (UNHCR). The delivery format alternated between presentations, group work, plenary discussions, videos, case studies, exercises and presentations from participants.

## II. Outcome

7. The three-day Regional Training Workshop was very successful thanks to the level of participation, the overall level of expertise, participants' active engagement, as well as by the insights, challenges and experiences shared along the workshop, in particular during the group work and discussion sessions.

8. The workshop responded to its main objectives and participants' expectations, such as the exchange of good practices and the identification of challenges to efficiently respond to migrant smuggling at national and regional levels.

9. Participants acknowledged their change in perception of the crime of smuggling of migrants; in particular they highlighted the urgent need to balance the repressive response with humanitarian imperatives as the fight against criminal networks and the protection of the rights of migrants are two aspects of a common response.

10. A package of material was disseminated among participants. It included, among others, the Basic Training Manual on Smuggling of Migrants<sup>2</sup> (E, S, F), the Issue paper on Smuggling of Migrants by Sea<sup>3</sup> (E, S, F) and the Issue Paper on Corruption and Migrant Smuggling<sup>4</sup> (E, S).

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<sup>2</sup> [www.unodc.org/unodc/en/human-trafficking/electronic-basic-training-manual-on-investigating-and-prosecuting-smuggling-of-migrants.html](http://www.unodc.org/unodc/en/human-trafficking/electronic-basic-training-manual-on-investigating-and-prosecuting-smuggling-of-migrants.html).

<sup>3</sup> [www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue\\_Paper\\_-\\_Smuggling\\_of\\_Migrants\\_by\\_Sea.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf).

<sup>4</sup> [www.unodc.org/documents/human-trafficking/2013/The\\_Role\\_Of\\_Corruption\\_in\\_the\\_Smuggling\\_of\\_Migrants\\_Issue\\_Paper\\_UNODC\\_2013.pdf](http://www.unodc.org/documents/human-trafficking/2013/The_Role_Of_Corruption_in_the_Smuggling_of_Migrants_Issue_Paper_UNODC_2013.pdf).

### **III. Sessions**

#### **A. Welcome address**

11. Mr. Amado Philip de Andrés, Representative of the United Nations Office on Drugs and Crime for Central America and the Caribbean opened the event together with Mr. Erick Hyer, Minister Counsellor from the United States Embassy in Panama; and Mr. Álvaro Varela, Secretary General of the Ministry of Public Security in Panama. Speakers highlighted the importance of working in regional networks to tackle the challenges posed by the organized crime.

#### **B. Setting the scene: Smuggling of migrants affecting by sea**

12. A video on the outcomes of the “International Conference against smuggling of migrants by land, sea and air” organized in Mexico City on 16-18 April 2012 introduced the session stressing the challenges and the progress towards combating migrant smuggling.

##### **1. Overview**

13. Morgane Nicot, Crime Prevention and Criminal Justice Officer, UNODC Headquarters, introduced the Issue paper on Smuggling of Migrants by Sea.<sup>5</sup> The session served as an introduction to the broader picture with the links between migration and migrant smuggling, the involvement of organized crime and the business made out of this crime. The lack of data at the global level on trends, volumes, links with organized crime and other crimes and the amount of profits generated was also stressed.

##### **2. Regional trends**

14. Felipe De La Torre, Regional Adviser, UNODC Liaison and Partnership Office, Mexico City, delivered a presentation on the regional trends of the smuggling of migrants by sea in Mexico, Central America and the Caribbean. It was noted that there is scarce official data and/or statistics about this type of smuggling, and that the information provided in the presentation was the result of a 6 month UNODC monitoring of the news and incidents reported by the media and/or webpages of government institutions as well as non-governmental organizations. The information exchanged with participants resulted valuable as it raised their interest. A number of “food for thought” questions/ideas were formulated to the audience for further analysis such as the nationalities both of smugglers and migrants object of smuggling, most controlled routes and the number of children traveling by sea. It was highlighted that, while there is abundant information about migrant smuggling by land, the modus operandi by sea still constitutes a true challenge considering the vast size of the Caribbean Sea and the length of the coastal areas of Mexico and Central America. The presentation also emphasized the increasing presence of nationals from some countries in East Africa and South Asia, most of them not having diplomatic representations in the region.

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<sup>5</sup> [www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue\\_Paper\\_-\\_Smuggling\\_of\\_Migrants\\_by\\_Sea.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf).

## C. Presentations

15. Eurídice Márquez, Crime Prevention and Criminal Justice Officer, UNODC Headquarters introduced the background of the Regional Training Workshop, its objectives and participative methodology. Participants were asked to work in groups and present their professional background and exposure to migrant smuggling, expectations from the training as well as to suggest one important rule to follow during the workshop.

### Participants' expectations

- (a) Improve knowledge about SOM;
- (b) Improve knowledge on related crimes;
- (c) To have regional approach and improve coordination;
- (d) To enhance international cooperation/sharing of information;
- (e) Investigation and prosecution methods and techniques;
- (f) To know about prevention measures;
- (g) Support to countries;
- (h) SOM trends and modus operandi;
- (i) To know about good practices in dealing against SOM;
- (j) To know about migrant assistance processes.

## D. Legal framework and jurisdiction issues

### 1. Smuggling of Migrants Protocol

16. Morgane Nicot, Crime Prevention and Criminal Justice Officer, UNODC Headquarters.

17. This session aimed at reviewing States Parties obligation under the Smuggling of Migrants Protocol supplementing the United Nations Convention against Transnational Organized Crime, in particular the definitions (art. 3) and criminalization requirements (art. 6), including the constitutive elements (“with the financial or other material benefit element”), enabling stay and document fraud, as well as aggravating circumstances. The differences between trafficking in persons and smuggling of migrants were also reviewed. An exercise triggered discussions around the elements of the crime and related conduct. Participants were given the chance to analyse in group their own legislation to assess its compliance with the international framework and identify gaps.

### 2. Law of the Sea

18. Siri Bjune, Programme Officer, Global Maritime Crime Programme, UNODC Headquarters, gave an overview of the different legal frameworks with regard to jurisdiction at sea with focus on smuggling of migrants. The presentation provided a background to the United Nations Law of the Sea Convention (UNCLOS) with main

focus on the maritime zones and the related jurisdiction and powers respectively, including article 3 on Territorial Sea, art 33 on the Contiguous zone, and art 87 on the High Seas. Further, the session looked at the State's obligations at sea according to the UNCLOS art 98. It was highlighted that the UNCLOS does not cover offences of smuggling of migrants directly and should therefore be read in conjunction with the UNTOC and its Protocol on Migrant Smuggling at sea, land and air. In this regard, the presentation included focus on art 7, 8 and 9 and the requirement for states to cooperate to prevent and suppress the smuggling of migrants by sea. Safety and rescue at sea were mentioned acknowledging the RAS and SOLAS and emphasizing that an in-depth review of the two instruments would be presented by colleagues from an operational angle.

19. Participants worked on specific pre-made questions on their national legislation and application of international legal frameworks. The points on jurisdiction were not reported on in plenary but made the groups aware of their own situation with regard to possibility of prosecuting smuggling of migrants at sea.

### **3. Lessons learned**

- (a) The awareness of existing legal frameworks with regard to the smuggling of migrants at sea;
- (b) The importance of ratifying international conventions and instruments and the need to implement such provisions in domestic legislation;
- (c) The need for cooperation nationally and regionally.

## **E. Protection and assistance issues**

### **1. Introduction: under the Smuggling of Migrants Protocol**

20. Eurídice Márquez, Crime Prevention and Criminal Justice Officer, UNODC Headquarters.

21. This session aimed at recognizing State Parties to the Smuggling of Migrants Protocol mandatory obligation to protect and assist smuggled migrants (art. 16 protection and assistance); to understand the role of criminal justice practitioners to protect and assist smuggled migrants; as well as to understand protection and assistance implications and measures for a smuggled migrant who is a victim and/or a witness of crime. It was noted that regardless of their immigration status — migrants object to smuggling have the right to expect that their human rights and dignity will be upheld and prioritized at all stages by those who intercept them, as well as to consider and implement special needs for vulnerable persons (e.g. victims of trafficking, asylum seekers and refugees, smuggled migrants, unaccompanied migrant children, stranded migrants, etc.). It was also highlighted that in cases where smuggled migrants become victims of crimes, additional obligations and responsibilities arise to protect migrants and prosecute offenders.

### **2. Mixed Migration and Refugee Protection in the Caribbean**

22. Simone Schwartz-Delgado, Senior Regional Protection Officer, UNHCR.

23. This session dealt with mixed migration flows and protection and assistance needs of migrants and refugees. It was mentioned that in 2014, there were 152 recorded maritime incidents in the Caribbean involving a total of 5215 migrants, mostly of Haitian and Cuban origin, with 25 reported deaths and 48 persons missing.

24. There are increasing “mixed migration” flows, involving many different categories of persons on the move, including asylum-seekers and refugees and other persons in need of international protection. The effective management of the phenomenon of mixed migration requires a careful balance between the prevention and combatting of smuggling and human trafficking, migration control as well as refugee protection. The complementarity between refugee protection and the fight against smuggling and trafficking is articulated through the Savings Clauses contained in Article 19 of the 2000 Smuggling of Migrants Protocol and in Art. 14 of the Trafficking in Persons Protocol. States need to put in place protection-sensitive entry systems to ensure an early identification of persons with specific protection needs and fully safeguard the respect of the non-refoulement principle and other fundamental rights.

25. The UNHCR’s 10-Point Plan of Action was mentioned as it provides a practical framework for States to establish differentiated procedures and effective referral systems. States are therefore encouraged to develop comprehensive, cooperative and protection-sensitive responses to mixed movements, including the identification of solutions appropriate to the profiles of the respective irregular migrants. Whereas entry officials play a crucial role to ensure access of all persons in need of international protection to the territory and to the refugee status determination procedures, they are not responsible for making substantive decisions on the merits of asylum claims — this remains the competence of a specialized entity, (Refugee Unit, Immigration Service) with the support of UNHCR, as required.

26. Juan Carlos Murillo, Head of Regional Legal Unit, San Jose, UNHCR Costa Rica, introduced the “Regional Guidelines for the Preliminary Identification and Referral Mechanisms for Migrant Populations in Vulnerable Situations”(shared with all participants) were adopted by the States participating in the Regional Conference on Migration (Puebla Process) to assist in the identification of vulnerable migrants. This regional tool also serves as a pre-screening mechanism for profiling and referral of persons in need of international protection.

### **3. Assistance, security and protection of victims and witnesses**

27. Felipe De La Torre, Regional Adviser, UNODC Liaison and Partnership Office, Mexico City.

28. The concepts of assistance and protection of victims and witnesses are usually used interchangeably; however, UNODC in its capacity of guardian of the United Nations Convention against Transnational Organized Crime puts much emphasis in the differentiation of these terms. A presentation about the nature, scope, limits and considerations about measures to assist, provide security and protect victims and witnesses was delivered. It aimed at clarifying the different role, needs, knowledge about the criminal operations and exposures to risk of victims, victims-witnesses, innocent bystanders, witnesses and collaborators of justice. After the session, some

participants requested UNODC to provide further information about the work undertaken by the Office on the guidelines to protect witnesses in organized crime trials.

#### **4. Lessons learned**

- (a) State Parties' mandatory obligation to protect and assist smuggled migrants (art.15 protection and assistance);
- (b) The State within whose sovereign territory, or territorial waters, interception takes place, has the primary responsibility for addressing any protection needs of intercepted persons;
- (c) States must observe the principle of non-refoulement;
- (d) States need to implement special needs for vulnerable groups;
- (e) Authorities have a duty to offer protection and assistance to smuggled migrants, and in cases where smuggled migrants become victims of crimes, additional obligations and responsibilities arise to protect migrants and prosecute offenders.

### **F. Encountering smuggling of migrants by sea**

#### **1. Rescue at Sea Operations**

29. Bart Hulbosch, Programme Coordinator, Maritime and Transnational Organised Crime Programme, UNODC Regional Office for Eastern Africa.

30. This session dealt with the legal grounds for rescue operations at sea in the framework of the Convention on Maritime Search and Rescue (SAR), Convention on International Civil Aviation (Chicago) annex 12 United Nations Convention on Law of the Sea (UNCLOS) art 98 Duty to Render Assistance, Convention for Safety of Life at Sea (SOLAS) Chapter V, Regulations 7 and 33, the International convention on salvage (1989), art 10/11. Main principles refer to: maximise efforts to reduce loss of life at sea; ensure predictability in identifying places for disembarkation; safeguard the principle of non-refoulement; and promote the principle of burden and responsibility sharing.

#### **2. Detection and Prevention of Migrant Smuggling at Sea**

31. Lou Orsini, Senior Maritime Law Enforcement Advisor, United States Coast Guard.

32. This session covered the practical application of international laws and obligations, along with implementing domestic legislation, to the situation of smuggling of migrants at sea. Points emphasized were that SOM at sea is extremely dangerous and smugglers must be prosecuted; ensuring safety of life at sea is paramount but border security is a fundamental aspect of at sea operations; countries must meet their international obligations regarding treatment of interdicted migrants; smugglers are not the migrants' friends as it is simply a business to them and migrants are chattel; and every smuggling venture is unique

hence standard tactics, techniques and procedures (TTP) used by law enforcement officials must be sufficiently flexible to address the facts of the situation.

33. The session addressed the cycle of success whereby intelligence helps in detection leading to interdiction followed by investigation and prosecution, which yields information that becomes intelligence used to inform positioning for future detections. Prior to interdiction, a risk assessment is needed to identify and mitigate the dangers to migrants and law enforcement officials. There was a discussion of migrant smuggling indicators; procedures for safe embarkation, care, security and processing of migrants; and procedures for the investigation of the situation and evidence collection for prosecution of smugglers. This was followed by processes used to make a determination for disposition of the migrants based on their situation, and coordination of repatriation when that is the final outcome.

34. Participants from the Dominican Republic also presented on the investigation of a recent case “Caso Armandito” including challenges faced as well as lessons learned.

### **3. Lessons learned**

- (a) Safety of life at sea is paramount;
- (b) Must meet international obligations regarding fear of persecution or torture (non-refoulement);
- (c) Sovereign nations must be able to control their maritime borders;
- (d) Migrant smuggling is a crime that must be prosecuted.

## **G. Group exercise**

### **1. Protection & Assistance: Putting theory into practice**

35. Jorge Vargas Mediavilla, Project Assistant, UNODC Regional Office for Central America and the Caribbean, moderated the group exercise based on a case study that aimed at highlighting the importance following a victim-centred approach, particularly for front-line law enforcement. Migrants are entitled to receive attention, assistance and protection, regardless of their migratory status, condition and participation in the prosecution process. The aforementioned rights are based on human rights and the international legal framework (hard and soft law) which must be complied with.

36. Participants were divided in groups of three to five persons. Prior to the case study, a glossary of definitions was handed to participants as “food for thought”. In order to stress the importance of the victim-centred approach, a brief discussion on the concepts took place. The second part of the session consisted in analysing and discussing a case study.

37. Key conclusions of the case study included the need to provide orientation and legal counselling to all irregular migrants and give them the opportunity to apply for asylum (and not limiting this option only to the person who explicitly asks for asylum), as more persons (including victim of trafficking, unaccompanied migrant children, etc.) may be in need of international protection and should be protected

against forced return to their country of origin (non-refoulement principle). A fear of persecution due to a variety of grounds, such as (imputed) political opinion, religious motives and gender-based persecution, as well as situations of conflict, massive human rights violations and generalized violence can generate international protection needs and be the basis for recognition of refugee status.

## **2. On board: Putting theory into practice**

38. Lou Orsini, Senior Maritime Law Enforcement Advisor, United States Coast Guard moderated another group exercise that aimed at analysing concrete scenarios. In this group work four scenarios based on actual cases to allow participants to apply what we discussed in the workshop to specific fact sets based on international obligations and their domestic laws. Each of four groups reviewed and addressed a set of seven questions about a specific scenario, and shared their findings with the other three groups, which were then discussed.

## **3. Good practices identified**

- (a) The need to identify and establish points of contact (POCs) among interagency partners and internationally;
- (b) Having standard techniques and procedures (TTP) that are flexible enough to handle any SOM situation;
- (c) Identifying the desired endgame (objective) prior to undertaking law enforcement activities;
- (d) Ensuring there is domestic law that enables country to meet international obligations;
- (e) Having process to identify migrants with protection concerns; and
- (f) Recognize need to collect and preserve evidence throughout the process.

## **H. On land: Investigating land based smuggling networks: Italy's experience**

39. Rocco Liguori, Public Prosecutor's Office, Catania, Italy.

40. Smuggling of migrants is an international crime that requires an international response from all interested States. The aim of this session was to exchange experiences and work methods in the fight against migrant smuggling. The presentation covered general principles governing the crime of smuggling of migrants with practical cases to promote the exchange of ideas and to compare the Italian operating procedures with those of the Region. The pictures and video shown to illustrate the practical cases and processes (e.g. detection and interception, search and rescue at sea operations, disembarkation issues, etc.) proved to be very powerful tools to stimulate the debate as well as to drive participants' exchange of experiences. Cooperation between judicial and police authorities for the exchange of information was addressed as an essential element in the fight against migrant smuggling. The problem needs a comprehensive response due to its nature, and therefore it requires cooperation and a concerted approach from the different law enforcement authorities.

## I. Prevention

41. Felipe De La Torre, Regional Adviser, UNODC Liaison and Partnership Office, Mexico City, delivered a brief presentation, based upon the Issue paper on Smuggling of Migrants by Sea,<sup>6</sup> about the four pillars of prevention:

- (a) addressing root causes;
- (b) awareness raising;
- (c) intercept smuggling • Need to identify and establish points of contact (POCs) among interagency partners and internationally; • Have standard tactics, techniques and procedures (TTP) that are flexible enough to handle any SOM situation; • Identify the desired endgame (objective) prior to undertaking law enforcement activities; • Ensure there is domestic law that enables country to meet international obligations; • Have a process to identify migrants with protection concerns; and • Recognize need to collect and preserve evidence throughout the process. Good practices identified: 11 vessels before departure; and
- (d) increase research, data and information-sharing.

42. The main elements of each pillar were explained followed by participants' contributions to expand, question or add new inputs for analysis. It was noted that while the public perception is that prevention relates only to the development of campaigns and awareness raising activities, law enforcement authorities play a key role in preventing the smuggling of migrants through a number of intelligence/operational/tactics actions to dismantle organized crime groups. Moreover, an enriching dialogue between the presenter and the participants was generated around reasons of structural nature for people to migrate and utilize the services of smugglers to irregularly cross borders.

## J. The role of corruption

43. Virginia De Abajo-Marqués, Regional Anti-Corruption Mentor, UNODC Regional Office for Central America and the Caribbean This session aimed at raising participants' awareness about the opportunities for corruption in migrant smuggling (e.g. counterfeiting of travel documents, facilitating the use of counterfeit documents, within civil registries and consulates, etc.), the challenges posed to law enforcement, shared some good practices to implement as well as invited participants to take good note of the main findings of the Issue Paper on Corruption and Migrant Smuggling.<sup>7</sup>

### 1. Challenges

- (a) Lack of automatic ability to systematically investigate related corrupt conducts;

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<sup>6</sup> [www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue\\_Paper\\_-\\_Smuggling\\_of\\_Migrants\\_by\\_Sea.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf).

<sup>7</sup> [www.unodc.org/documents/human-trafficking/2013/The\\_Role\\_Of\\_Corruption\\_in\\_the\\_Smuggling\\_of\\_Migrants\\_Issue\\_Paper\\_UNODC\\_2013.pdf](http://www.unodc.org/documents/human-trafficking/2013/The_Role_Of_Corruption_in_the_Smuggling_of_Migrants_Issue_Paper_UNODC_2013.pdf).

- (b) Difficulty proving conducts such as bribery, influence peddling, abuse of power, et al. (Need for technical specialization);
- (c) Potential lack of internal coordination among specialized units (anticorruption prosecutor and organized crime prosecutor, for example);
- (d) Conspicuous absence of indictments: justification by many of corruption aimed at smuggling of migrants by not linking it with organized criminal groups.

## **2. Good practices against corruption**

- (a) Identification of risks in key institutions and units with the biggest risk of corruption (Immigration, Customs, police forces assigned to frontier posts in general, prosecutors, courts, etc.);
- (b) Adoption of a corruption risk mitigation strategy with specific measures and their promotion;
- (c) Follow-up and evaluation mechanisms for the adopted measures;
- (d) Integrity testing of personnel exposed to corruption risks (entrapment);
- (e) Have the automatic ability to investigate the corrupt conduct that has made it possible to commit the crime being investigated;
- (f) Identify, seize and confiscate: the instruments of the crime; the proceeds from the crime and their laundering; intermingled assets; the profit generated from the proceeds of the crime and its laundering;
- (g) Adoption of laws that allow: Non-conviction based asset (NCBA) forfeiture; Non-conviction based asset forfeiture within a criminal proceeding; Extended confiscation; Confiscation of third-party assets.

## **K. National coordination issues**

44. Eurídice Márquez, Crime Prevention and Criminal Justice Officer, UNODC Headquarters moderated this session that consisted of a group exercise aimed at analysing and discussing the different national experiences in relation to the implementation of the Smuggling of Migrants Protocol, as well as the conclusions 3.4.3. and 4.4.3 on interagency cooperation included in the Issue paper on Smuggling of Migrants by Sea.<sup>8</sup>

45. Participants actively engaged in this session, worked in groups and shared the following challenges and good practices on dealing with and improving interagency coordination at national level.

### **Interagency challenges**

- (a) Lack of operational procedures against migrant smuggling;
- (b) Lack of a specialised inter-secretariat/ministerial committee on smuggling of migrants;

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<sup>8</sup> [www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue\\_Paper\\_-\\_Smuggling\\_of\\_Migrants\\_by\\_Sea.pdf](http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Issue-Papers/Issue_Paper_-_Smuggling_of_Migrants_by_Sea.pdf).

- (c) There are some investigations but don't lead to convictions;
- (d) Issues with the return process of migrants;
- (e) Issues with approaching migrants (e.g. lack of cooperation, translation issues) call for having a protocol;
- (f) Lack of public awareness/information targeting vulnerable groups;
- (g) Need to improve the mechanisms/measures and apply resources in an efficient way;
- (h) Lack of a proper budget, insufficient staff or lack of knowledge and skills on the issue;
- (i) Migration authorities have insufficient infrastructure and capacity;
- (j) Lack of attention to migrant smuggling in detail;
- (k) Corruption; and
- (l) Implementation of the law.

## **L. International cooperation issues**

46. Virginia De Abajo-Marqués, Regional AntiCorruption Mentor, UNODC Regional Office for Central America and the Caribbean addressed cooperation mechanisms and measures within the framework of the UNTOC such as international cooperation for purposes of confiscation (art. 13), disposal of confiscated proceeds of crime or property (art. 14), extradition (art. 16), mutual legal assistance (art. 18), joint investigations (art. 19), special investigative techniques (art. 20), as well as the establishment of channels of communication and information sharing. The draft CARICOM/Caribbean agreement for the sharing or return of confiscated assets was mentioned as a promising regional practice.

## **M. Regional cooperation**

47. Simone Schwartz-Delgado, Senior Regional Protection Officer, UNHCR Regional Office Washington This session dealt with the establishment of a Regional Consultative Process for the efficient management of mixed migration in the Caribbean. A comprehensive approach needs to be developed among States in a particular region in order to:

- (a) address and eliminate the complex and multi-dimensional root causes;
- (b) develop coherent and predictable responses to refugees and irregular migrants in the region;
- (c) provide real disincentives for human smuggling and trafficking;
- (d) allow for pooling of resources to maximize the efficiency of available resources; and
- (e) identify cooperative solutions, along the lines of the 10-Point Plan of Action, based on the principle of responsibility-sharing in a spirit of solidarity. The

UNHCR/IOM Caribbean Regional Conference on the Protection of Vulnerable Persons held in The Bahamas in May 2013 concluded with a recommendation for Caribbean States to establish a Regional Consultative Process to enhance regional cooperation. This proposal was taken up again at the Caribbean Regional Consultation held in the Cayman Islands in September 2014, in the context of the commemorations of the 30th Anniversary of the Cartagena Declaration. The Brazil Declaration and Plan of Action, adopted in December 2014 by 28 States and 3 territories of Latin America and the Caribbean, incorporated the outcomes of the Cayman consultation and provides a valuable regional protection framework.

48. Participants actively engaged in this session, worked in groups, and shared the following good practices on dealing with and improving interagency coordination.

#### **Cooperation and coordination: good practices**

- (a) Specialised legislation that creates/indicates institutions and funding allocation;
- (b) The establishment of a specialized department and the organization of periodic meetings as well as having a protocol on how to deal with migrants;
- (c) The establishment of a specialized committee against human trafficking as well as actions carried out by the national police in coordination with other authorities Standard operating procedures against trafficking that could be adapted and used against migrant smuggling;
- (d) Protocols of actions developed by navy and the National Migration Institute as well as interinstitutional coordination with maritime interdiction agencies (e.g. coast guard, police, navy, etc.);
- (e) Development of strategic plans of prevention and responses to threats (short and long scope);
- (f) To put in practice measures to receive, assist and protect migrants;
- (g) Special measures for vulnerable migrants, particularly unaccompanied migrant children;
- (h) Establishment of agreements among countries on repatriation of migrants;
  - (i) Close contact and communication among the destination country and the country of origin (e.g. maritime interdiction agencies);
  - (j) Put into practice the Vienna Convention on consular relations;
  - (k) Trainers/participants to become multiplier agent to pass on the info and knowledge; and
  - (l) Strengthen regional cooperation and share regional issues. To establish an office on regional cooperation and information sharing. To have a regional protocol to facilitate the proceedings on SOM and on migrant protection (legal aspects).

## IV. Conclusions and next steps

49. The workshop met its main objectives and participants' expectations, such as the exchange of good practices and the identification of challenges to efficiently respond to migrant smuggling at national and regional levels.

50. While the United Nations Convention against Transnational Organized Crime and the Protocol against the Smuggling of Migrants by Land, Sea and Air were generally known by participants and their respective authorities, the levels of interpretation and/or implementation of these instruments differs among countries in the region.

51. The element of financial or other material benefit to the smuggler (art. 3 of the Protocol), included or not in the criminalization of smuggling of migrants, proved to be one of the most debated aspects, generating interest throughout the workshop. In the absence of a specialized anti-smuggling legislation, States have used alternative legislation, including laws against organized crime, to prosecute the perpetrators. The work carried out by UNODC in Mexico and Central America in order to criminalize migrant smuggling may serve as a good practice for other countries that lack a specific criminal offence.

52. The need to work in a cooperative and collaborative manner in regional networks is essential. In this regard, participants identified sharing intelligence to identify and intercept vessels before departure as a good prevention practice. Duly established, functional and sustainable networks should be expanded to include specialized authorities in preventing and combating the smuggling of migrants by sea.

53. The extent of the Caribbean Sea, the length of the Mexican and Central American coasts, and the characteristics of the countries concerned as coastal countries with two oceans offer enormous areas for the smuggling of migrants by sea often beyond the capability for national control. The coincidence of these routes with other illicit trafficking routes for drugs, weapons or wildlife may generate more violence against smuggled migrants. Therefore, discussions highlighted the urgent need to balance the authoritarian response with humanitarian imperatives. The fight against criminal networks and protecting the rights of migrants are two aspects of a common response. We must ensure that the fight against the smuggling of migrants is not carried out at the expense of the rights of migrants, the principle of non-refoulement and customary international law governing rescue at sea.

54. The feedback received from participants, observers and trainers, together with the outcomes of this first pilot Regional Training Workshop, will inform the upcoming regional workshops on migrant smuggling by sea in other regions, as well as the final meeting and tool to be developed in conclusion of the series of workshops around the world.