



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

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**Review of the Implementation of the Protocol against the  
Smuggling of Migrants by Land, Sea and Air,  
supplementing the United Nations Convention against  
Transnational Organized Crime**

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

**Analytical report of the Secretariat**

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction . . . . .	1-10	3
A. Mandate of the Conference of the Parties . . . . .	1-2	3
B. Reporting process . . . . .	3-7	3
C. Scope and structure of the report . . . . .	8-10	4
II. Overview of reported national action for the implementation of the Migrants Protocol provisions under consideration . . . . .	11-41	5
A. Matters related to protection and assistance measures for smuggled migrants	11-18	5
B. Matters related to the return of smuggled migrants . . . . .	19-30	8
C. Matters related to border measures, security and control of documents and legitimacy and validity of documents . . . . .	31-36	12

\* CTOC/COP/2006/1.



D.	Matters related to the security and control, as well as legitimacy and validity, of documents .....	37-41	14
III.	Concluding remarks .....	42-43	15

## **I. Introduction**

### **A. Mandate of the Conference of the Parties**

1. In its decision 2/4, adopted at its second session, held in Vienna from 10 to 21 October 2005, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I, hereinafter the Organized Crime Convention) decided that its programme of work in reviewing the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (hereinafter the "Migrants Protocol", General Assembly 55/25, annex III) would include the following areas:

(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. In the same decision, the Conference of the Parties requested the Secretariat to collect information from States parties and signatories to the Protocol, in the context of the above programme of work, using for that purpose a questionnaire developed by the Secretariat and approved by the Conference at its second session, urged States parties to the Migrants Protocol to respond promptly to the questionnaire circulated by the Secretariat, invited signatories to provide the information requested, and requested the Secretariat to submit an analytical report based on the responses received by the Conference at its third session.

### **B. Reporting process**

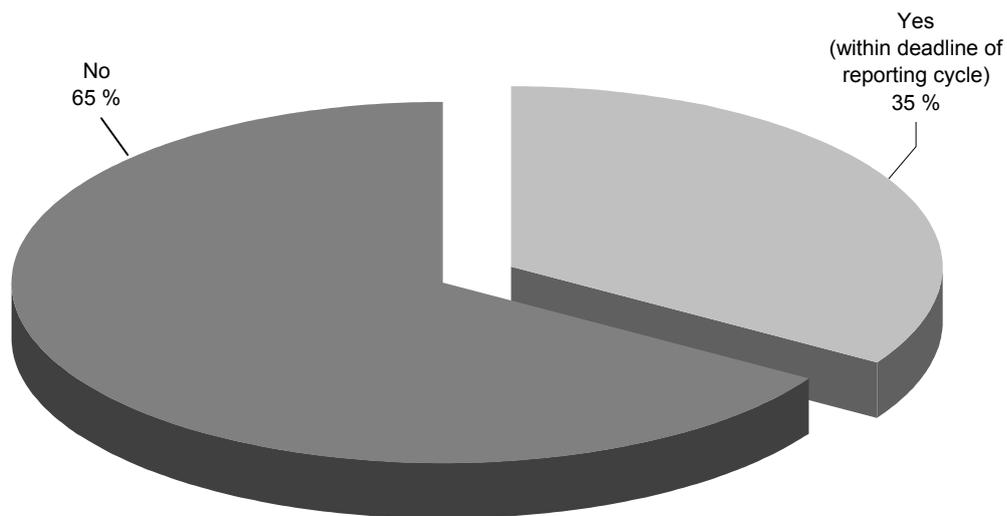
3. A draft questionnaire on the implementation of the Migrants Protocol was brought to the attention of the Conference of the Parties for review and comments at its second session (CTOC/COP/2005/L.9). The final text of the questionnaire, as approved by the Conference, was disseminated to States parties and signatories to the Migrants Protocol on 10 February 2006 with a view to obtaining the required information in accordance with decision 2/4.

4. Following the practice of the first reporting cycle of the Conference of the Parties, in 2005, the Secretariat also sent the questionnaire to non-signatory States with a view to encouraging them to participate in the information-gathering system of the Conference and, thus, gain experience and knowledge on how States parties to the Migrants Protocol had adjusted their legal and institutional framework in order to address the issues under discussion.

5. By means of an information circular dated 4 May 2006, the Secretariat reminded States parties to the Migrants Protocol of their obligation to provide information and invited signatories to do likewise at their earliest convenience, but not later than 20 May 2006.

6. As at 24 July 2006, the Secretariat had received responses from 41 States, of which 32 were parties to the Migrants Protocol, 6 were signatories and 3 non-signatories. Many of the responding States also provided copies of their relevant legislation. As at the same date, the Protocol had received 92 ratifications. Thus, as the figure below illustrates, only 35 per cent of States parties to the Protocol had responded to the questionnaire.

**States parties responding to the questionnaire for the second reporting cycle on the Protocol against the Smuggling of Migrants by Land, Sea and Air**



7. The breakdown by regional group of States Members of the United Nations that had responded to the questionnaire on the implementation of the Migrants Protocol, as well as Member States that had not submitted replies, is provided in tables contained in document CTOC/COP/2006/13.

**C. Scope and structure of the report**

8. The present analytical report contains a summary and an analysis of national replies and highlights the progress made towards meeting the requirements set out in the Migrants Protocol and the difficulties that States are, at times, facing in implementing its provisions.

9. The structure of the report follows the guidance given by the Conference of the Parties in its decision 2/4. The report thus presents the measures reported to have been taken for the protection and assistance of smuggled migrants, as well as their safe return to their States of origin. It also contains information on national action aimed at streamlining border controls and ensuring the integrity and security

of travel and identity documents that could be used for the purpose of smuggling of migrants.

10. The present report does not purport to be comprehensive or complete, as it reflects the situation in approximately one third of the States parties to the Protocol.

## **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**

11. 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, and 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 Kuwait provided a negative response, while 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. Indonesia referred to the ongoing process of enacting national legislation on the smuggling of migrants.

12. 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,<sup>1</sup> the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>2</sup> the International Convention on the Elimination of All Forms of Racial Discrimination,<sup>3</sup> the Convention relating to the Status of Refugees,<sup>4</sup> the Protocol relating to the Status of Refugees,<sup>5</sup> the Convention for the Protection of Human Rights and Fundamental Freedoms of the Council of Europe,<sup>6</sup> that Convention as amended by Protocol No. 11,<sup>7</sup> and its Protocols No. 1 (concerning protection of property, the right to education and the right to free elections),<sup>8</sup> No. 4 (securing rights and freedoms other than those already included in the first Protocol thereto)<sup>9</sup> and No. 6 (concerning the abolition of the death penalty),<sup>10</sup> and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador").<sup>11</sup> 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 death or serious injury of those persons.

## **2. Protective measures for smuggled migrants against potential violence**

13. 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). A number of States (Algeria, Canada, Czech Republic, Italy, Kuwait, 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 Bulgaria mentioned its 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) 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 subject that person to a threat to his or her right to life, freedom and personal safety, to torture or inhuman or degrading treatment or punishment or to the deprivation of the right to a fair trial.

## **3. Assistance measures for smuggled migrants**

14. 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. Several States reported the availability of temporary shelters and reception centres (Indonesia, Netherlands, Norway, Romania, Serbia and Montenegro<sup>12</sup> and Turkey), while some States highlighted the provision of medical and humanitarian assistance (Italy, Romania and Turkey). In addition, the provision of social services to ensure social rehabilitation of the smuggled migrants was reported by Latvia. Latvia also referred to educational campaigns to raise awareness on this issue. Romania underscored that aliens applying for refugee status were afforded legal assistance free of charge, coupled with information on related judicial and administrative proceedings. 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. 26 below), non-governmental organizations (Bulgaria, Croatia and Romania) or embassies of other States (Lebanon and Zimbabwe). Myanmar pointed out that specific measures for providing assistance to smuggled migrants were not yet in place domestically and therefore there was a need to adopt such measures in future.

#### **4. Special needs of women and children**

15. 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 (see art. 16, para. 4, of the Migrants Protocol). Only 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.

16. 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. A number of States reported on specific measures aimed at ensuring the protection of women and children found among smuggled migrants. In that context, they indicated that separate reception and accommodation centres were made available as a means of special protection for women and that priority was accorded to placing minors with their parents or legal guardian or, if necessary, in special premises (Croatia, Czech Republic, Lebanon, New Zealand, Romania, Turkey and United States). Paying consideration to the special needs of unaccompanied minors was further reported (Croatia, Lebanon 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 and Indonesia). Slovenia put emphasis on the special care given to prevent re-victimization and further exploitation of such persons. The former Yugoslav Republic of Macedonia stated that in cases where minors were needed to testify as witnesses in related proceedings, the presence of a psychologist or an education professional was mandatory.

#### **5. Notification to and communication with consular officers**

17. Almost all responding States underlined 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 Relations<sup>13</sup> (see art. 16, para. 5, of the Migrants Protocol). Morocco did not reply on this issue.

18. In particular, many States referred to their domestic legislation implementing article 36 of the Vienna Convention (Canada, Croatia, Czech Republic, Sweden, the former Yugoslav Republic of Macedonia and United States). Other States reported on the provisions of their immigration legislation (Estonia, Latvia, Mexico, New Zealand, Spain and Zimbabwe) or made reference to national practices facilitating the contact and communication with 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). 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), one State (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. Slovakia highlighted the alternative of informing the Ministry of Foreign Affairs of the respective State if an embassy of that State did not exist in its national territory. The Czech Republic referred to the right of an alien under detention to submit requests for the facilitation of contacts with relevant international organizations.

## **B. Matters related to the return of smuggled migrants**

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

19. 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. Finland did not provide an answer on this issue.

20. 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 (Bulgaria, Ecuador, Germany, Guatemala, Latvia, Romania, Serbia and Montenegro,<sup>12</sup> 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 and New Zealand) or generally their domestic legislation (New Zealand, South Africa, Spain, Sweden and Zimbabwe) or specifically their immigration and refugee legislation (Canada). 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). The Netherlands noted that its national authorities did facilitate such a process, but in relation to the acceptance of smuggled migrants no reported events existed, as it was a receiving State and not a State 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.

21. 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, 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 (Bulgaria, Romania, Slovenia and the former Yugoslav Republic of Macedonia). The existence of enabling domestic legislation was reported by New Zealand. Croatia, Germany, Romania 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 and had not expired. 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.

22. 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). Finland 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 (Croatia, the former Yugoslav Republic of Macedonia and Turkey), while New Zealand referred to its 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 and Norway 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.

23. 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). Finland 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, Peru, Romania, Slovakia, Spain, Sweden and Thailand). Other States underlined the cooperation with embassies and consulates for the issuance of the proper documentation (Lebanon, Mexico, Myanmar, Serbia and Montenegro,<sup>12</sup> Slovakia, Turkey and Zimbabwe). 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 referred to an obligation for its domestic authorities to issue travel documents or other authorization, although no relevant applications had so far been submitted, as the Netherlands was a receiving State and not a State of origin. The United States pointed out that, although not issuing travel documents or other authorization at the request of another State, it was possible to do so at the request of its nationals and permanent residents who had been victimized in order to enable their re-entry to 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**

24. 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 and only Morocco did not answer at all. Furthermore, Zimbabwe reported that national legislation on this issue was not yet in place.

25. 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, 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 (Bulgaria, Italy and South Africa), the facilitation of contacts with consulates (Ecuador, El Salvador and South Africa) and the existence of safeguards for the best interests of minors (Canada and Ecuador) and women (Ecuador). A few States reported that they encouraged the voluntary return of smuggled migrants (Finland and Sweden). In some cases, the necessary costs for the transportation to the destination State were covered by the receiving State (Czech Republic, Sweden and Turkey). Serbia and Montenegro<sup>12</sup> 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 Montenegro<sup>12</sup> 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**

26. Most of the responding States reported that their competent authorities had established cooperation with relevant international organizations in implementing measures to carry out the return of smuggled migrants (see art. 18, para. 6, of the Migrants Protocol). Only Morocco did not provide an answer. In that context, the national replies highlighted cooperation with IOM (Croatia, Finland, Germany, Indonesia, Italy, Latvia, Lebanon, Mexico, Netherlands, Norway, Romania, Serbia and Montenegro,<sup>12</sup> Slovakia, Slovenia, South Africa, Spain, Sweden, Thailand, Turkey and United Kingdom), the Office of the United Nations High Commissioner for Refugees (UNHCR) (Bulgaria, Croatia, Finland, Indonesia, Lebanon, Netherlands, Romania, Slovenia, Spain and Turkey), the International Committee of the Red Cross (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 of its domestic authorities with IOM, highlighting an agreement with that organization on the execution of voluntary returns of unsuccessful asylum seekers and 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 Interpol on updating of 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 remaining in the country. A number of States also underlined the cooperation of national authorities with specialized non-governmental organizations (Bulgaria, Romania, Spain and Turkey).

27. 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).

South Africa and the United Kingdom provided negative responses, while Morocco and Romania did not provide information 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.

28. 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 (Bulgaria, Croatia, Finland, Serbia and Montenegro,<sup>12</sup> Slovakia, Slovenia, 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). 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). Finally, Thailand made reference to ad hoc memorandums of understanding with neighbouring States.

#### **4. General remarks**

29. 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).

30. In reviewing the implementation of article 18 at the national level, the Conference of the Parties may also wish to take into account that this article is based on the understanding that States parties would not deprive persons of their nationality contrary to international law, thereby rendering them stateless.<sup>14</sup>

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

#### **1. Commercial carriers liability**

31. 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,

paras. 45-47). 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. Indonesia indicated that relevant legislation was pending. A number of States referred to specific measures concerning commercial carriers operating in road transportation, citing the difficulty to monitor the flow of traffic, in particular in States with long or porous borders. El Salvador referred to measures aimed at ensuring greater control of international buses, including through inspections at borders and on domestic roads, as well as establishing liability for carriers and drivers. Similarly, Turkey referred to specific regulations governing transport by road, with penalties such as the cancellation of permits for three years for the carrier upon conviction of smuggling of 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**

32. With the exception of Ecuador, 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, Morocco referred to a bilateral agreement with Spain to prevent and combat the migratory flux 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 (known as the FRONTEX programme). Most States referred to increased patrols and checks at border points and crossings and training programmes for border control agents. For example, 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. A number of States also reported specific technical means to increase effective controls at borders (Croatia, Peru, Serbia and Montenegro,<sup>12</sup> 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. Turkey reported the establishment of laboratories at border points for testing documents that were suspected of having been forged.

33. 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). Only Ecuador and South Africa provided negative responses on this issue. 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, Slovenia, Thailand and Turkey), 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. 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.

34. 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, paras. 48 and 49).

### **3. Cooperation with border control authorities of other States**

35. With the exception of Ecuador, 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. Tunisia and Turkey reported their cooperation with Interpol. Many States reported the establishment of direct channels of communication between their border control authorities (Bulgaria, Croatia, Czech Republic, Kuwait, Mexico, Myanmar, Romania, Serbia and Montenegro,<sup>12</sup> 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.

36. 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, paras. 56-63), as well as the implementation of article 11, paragraph 6, of the Trafficking Protocol (see CTOC/COP/2006/6, para. 50).

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

### **1. Security and control of documents**

37. 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 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. 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. Croatia referred to specific training programmes for police officers in charge of detecting forgery. Peru mentioned the establishment of a system of mechanized control to check the integrity of passports by visual reading. 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.

38. In taking stock of the information provided by the responding States in respect of 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. 1, paras. 30 and 31).

39. The Conference of the Parties may also wish to utilize in future additional information to be contained in a study on fraud, the criminal misuse and falsification of identity and related crimes, currently under preparation by the Secretariat in accordance with Economic and Social Council resolution 2004/26 of 21 July 2004.

## **2. Legitimacy and validity of documents**

40. 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 the purpose of smuggling of migrants (see art. 13 of the Migrants Protocol). Canada and Sweden provided negative responses, but both 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. 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.

41. 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 the corresponding article 13 of the Trafficking in Persons Protocol (see CTOC/COP/2006/6, para. 56).

## **III. Concluding remarks**

42. Unfortunately, the rate of responses received from States parties to the Migrants Protocol during the second reporting cycle of the Conference of the Parties was lower than that for the first reporting cycle, in which the problem of underreporting had already been identified. The continuous lack of information from a representative sample of States parties seriously affects the work of the Conference in reviewing efficiently the implementation of the Protocol provisions and further undermines the assistance that the Conference can provide after

assessing the needs of States on the basis of the information made available by them. The Secretariat raised its concerns about this problem to the chairpersons of the regional groups of Member States of the United Nations and asked them to use their good offices and call upon States members of their respective regional groups that had not done so to reply to the relevant questionnaires. The tables contained in document CTOC/COP/2006/13 provide an overview of the status of national responses in each of the regional groups separately. The Conference of the Parties may wish to consult these tables in order to gain a clear picture of where the problem of underreporting is more acute. In addition, it could consider whether it might be appropriate to move away from its questionnaire-based approach and use other methods of acquiring the necessary information for reviewing the implementation of the Migrants Protocol.

43. The overview of the national replies presented above demonstrates that the majority of States that responded to the questionnaire and that are parties to the Migrants Protocol, already had in place or had adopted measures to implement the provisions of articles 11 to 13, 16 and 18 of the Migrants Protocol under consideration. Some States reported shortcomings and requested assistance to address them. The Conference of the Parties, and in particular the open-ended interim working group on technical assistance, may wish to further consider ways and means of addressing the individual needs of States. The Conference of the Parties may, in particular, wish to discuss mechanisms to assist States parties in reporting adequately to the Secretariat in order to effectively establish needs and develop tailor-made technical support (from the States responding during the second reporting cycle of the Conference, Ecuador reported that its national authorities needed assistance in collecting and submitting relevant information to the Secretariat and completing technical papers such as the questionnaire on the implementation of the Migrants Protocol).

44. The Conference of the Parties may also wish to consider carefully the results of the High-level Dialogue on International Migration and Development, scheduled to take place on 14 and 15 September 2006 in accordance with General Assembly resolution 58/208 of 23 December 2003. It should be noted that the purpose of the High-level Dialogue is to discuss the multidimensional aspects of international migration and development in order to identify appropriate ways and means to maximize its development benefits and minimize its negative impacts. Additionally, the High-level Dialogue will have a strong focus on policy issues, such as the challenge of achieving the internationally agreed development goals, including the Millennium Development Goals. One of the four interactive round tables to be held in the context of the High-level Dialogue will deal with measures to ensure respect for and protection of the human rights of all migrants and to prevent and combat smuggling of migrants and trafficking in persons (see A/60/864, para. 15).

45. The Conference of the Parties may also wish to discuss gaps in implementing the Migrants Protocol as identified in the working paper on technical assistance (CTOC/COP/2006/9 and Add.1).

#### *Notes*

<sup>1</sup> United Nations, *Treaty Series*, vol. 999, No. 14668.

<sup>2</sup> General Assembly resolution 39/46, annex.

- <sup>3</sup> General Assembly resolution 2106 (XX), annex.
- <sup>4</sup> United Nations, *Treaty Series*, vol. 189, No. 2545.
- <sup>5</sup> *Ibid.*, vol. 606, No. 8791.
- <sup>6</sup> Council of Europe, *European Treaty Series*, No. 5.
- <sup>7</sup> *Ibid.*, No. 155.
- <sup>8</sup> *Ibid.*, No. 9.
- <sup>9</sup> *Ibid.*, No. 46. The Protocol provides, inter alia, that the collective expulsion of aliens is prohibited (art. 4).
- <sup>10</sup> Council of Europe, *European Treaty Series*, No. 114.
- <sup>11</sup> Organization of American States, *Treaty Series*, No. 69.
- <sup>12</sup> 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.
- <sup>13</sup> United Nations, *Treaty Series*, vol. 596, No. 8638.
- <sup>14</sup> 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).
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