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Commission on Crime Prevention and Criminal Justice

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Agenda item 6 (a)

Integration and coordination of efforts by the United Nations Office on Drugs and Crime and by Member States in the field of crime prevention and criminal justice: ratification and implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

**Albania, El Salvador, Guatemala, Honduras, Italy, Japan, Paraguay and the
United States of America: revised draft resolution**

Strengthening international cooperation in addressing the smuggling of migrants

The Commission on Crime Prevention and Criminal Justice,

Welcoming the thematic focus of the 30th CCPCJ session on effective measures to prevent and counter the smuggling of migrants, while protecting the rights of smuggled migrants, particularly women and children, and those of unaccompanied migrant children, which aims at enhancing international and multilateral cooperation to address the smuggling of migrants,

Recalling General Assembly resolutions 66/172 of 19 December 2011, entitled “Protection of Migrants”, 67/185 of 20 December 2012, entitled “Promoting efforts to eliminate violence against migrants, migrant workers and their families”, 69/187 of 18 December 2014, entitled “Migrant children and adolescents”, 69/167 of 18 December 2014, entitled “Protection of migrants”, 70/147 of 17 December 2015, entitled “Protection of migrants,” 71/1 of 19 September 2016, entitled “New York Declaration for Refugees and Migrants,” 74/148 of 18 December 2019, entitled “Protection of migrants,” and other relevant resolutions,

Bearing in mind those global efforts that promote dialogue and contribute to strengthen the international and regional cooperation framework, since no State can address migration on its own for the inherently transnational nature of the phenomenon,

Reaffirming Economic and Social Council resolution 2014/23 on strengthening international cooperation in addressing the smuggling of migrants, in which the Council underlined the need to address challenges related to the smuggling of migrants through a comprehensive and balanced approach, and through bilateral,

regional and international cooperation and dialogue, as appropriate, between countries of origin, transit and destination,

Reaffirming the importance of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime¹ as the primary international legal instrument to combat the smuggling of migrants and related conduct, as defined in the Protocol,

Recalling Article 19 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air in which it is stated that nothing contained in the Protocol shall affect the other rights, obligations, and responsibilities of states and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement, as contained therein,

Recalling the preamble of the Smuggling of Migrants Protocol, in which it is stated that effective action requires a comprehensive international approach, including cooperation, the exchange of information and other appropriate measures, including socioeconomic measures, at the national, regional and international levels,

Recalling also article 10 of the Smuggling of Migrants Protocol, in which States parties, in particular those with common borders or located on routes along which migrants are smuggled, agreed, for the purpose of achieving the objectives of the Protocol, to exchange among themselves, consistent with their respective domestic legal and administrative systems, relevant information, article 14 of the Protocol, in which States parties agreed to cooperate with each other and with competent international organizations, non-governmental organizations, other relevant organizations and other elements of civil society as appropriate to ensure that there is adequate personnel training in their territories to prevent, combat and eradicate the smuggling of migrants and to protect the rights of migrants who have been the object of such conduct, and article 17 of the Protocol, in which States parties agreed to consider the conclusion of bilateral or regional agreements or operational arrangements or understandings for the purpose of preventing and combating the smuggling of migrants,

Recalling the Kyoto Declaration on Advancing Crime Prevention, Criminal Justice and the Rule of Law: towards the Achievement of the 2030 Agenda for Sustainable Development adopted by the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice, in which Member States undertook to adopt and implement effective measures to prevent and combat the smuggling of migrants and protect the lives and the human rights of migrants, consistent with the respective obligations of parties under the United Nations Convention against Transnational Organized Crime² and the Smuggling of Migrants Protocol and all other relevant international obligations, especially on human rights, strengthen bilateral, regional and international cooperation in this regard, in particular to tackle, including through the concurrent undertaking of financial investigations and special investigative techniques, the increasing role of transnational and national organized criminal groups profiting from such crime and other crimes against migrants, and underscored their endeavour to make every possible effort to prevent further casualties and loss of lives,

Reaffirming the importance of enhancing the capacity of and providing technical assistance, to Member States, based on the need and priorities identified by requesting states, to support their efforts in preventing and combatting the smuggling of migrants, and taking note with appreciation the work and tools of the United Nations Office on Drugs and Crime in that regard,

Welcoming the launch of the review process of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, which will contribute to the due

¹ United Nations, Treaty Series, vol. 2241, No. 39574.

² Ibid., vol. 2225, No. 39574.

implementation of the Convention and the Protocol thereto, the appropriate identification of needs for technical assistance, and the significant reinforcement of international cooperation amongst States parties, and recalling the Guiding principles and characteristics of the Mechanism which emphasize that the Mechanism shall be conducted in conformity with article 4 of the Convention and shall be, inter alia, transparent, efficient, non-intrusive, inclusive, impartial, non-adversarial and non-punitive and of technical nature,

Reaffirming that smuggling of migrants and trafficking in persons are distinct but often interrelated crimes that may in some cases share some features and that in many cases require complementary legal, operational and policy responses, in accordance with the existing international instruments,

Recalling that migrants shall not be liable to criminal prosecution under the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, for the fact of having been the object of conduct set out in article six of the Protocol and that nothing in the Protocol prevents a State party from taking measures against a person whose conduct constitutes an offence under its domestic law,

Concerned about the risks to smuggled migrants such as the high rate of violent assault, sexual violence, increased vulnerabilities to different forms of exploitation and the number of migrants who die during the journey of being smuggled,

Recognizing that Member States in distinct regions of the world face unique challenges in the fight to prevent and combat the smuggling of migrants by land, sea and air, and that region-specific cooperation would improve the ability of Member States to address these challenges,

Cognizant of the difficulties expressed by some countries concerning the application of measures that hinder the ability of Member States in preventing and combating the smuggling of migrants by land, sea and air, including the provision of resources to such efforts,

Also recognizing the fundamental role of effective international cooperation in preventing and combating the smuggling of migrants and to this end, underline the importance of addressing, tackling and effectively responding to international challenges and barriers, in particular measures, that hinder such cooperation, and which are not consistent with the Charter of the United Nations and obligations under international law, and in this regard urge States, consistent with their international obligations, to refrain from applying such measures,

Taking note with appreciation of the United Nations Office on Drugs and Crime's global and thematic studies on the Smuggling of Migrants and the issue papers prepared by the Secretariat containing useful background information to facilitate discussion on, inter-alia, the impact of natural disasters, conflict and crises, such as the COVID-19 pandemic, on trends relating to organized criminal groups and routes used for the smuggling of migrants, as well as good practices to support law enforcement cooperation to detect, investigate and prosecute such cases,

Taking note also of the additional guide prepared by the Secretariat for the thematic discussion of the thirtieth session of the Crime Prevention and Criminal Justice Commission on effective measures to prevent and counter the smuggling of migrants, while protecting the rights of smuggled migrants, particularly women and children³, and those of unaccompanied migrant children, providing information on the impact of COVID-19 and its containment measures on people on the move and the smuggling of migrants,

Recognizing that the COVID-19 pandemic has increased the danger to smuggled migrants owing to travel restrictions affecting border crossings, which has increased the demand for illicit travel and the use by transnational criminal organizations of

³ E/CN.15/2021/6

lengthier and more hazardous routes, prevented the return of migrants stranded in transit countries and placed smuggled migrants at higher risk of contracting COVID-19 due to travelling in close physical proximity to others in confined spaces,

1. *Urges* States that have not yet done so to consider ratifying or acceding to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime;

2. *Encourages* States to continue to review and, as appropriate, strengthen, including for States that have not yet ratified or acceded to the Protocol, in a manner consistent with the fundamental principles of their domestic laws and applicable international obligations, their relevant legislation, including criminal legislation, and establish as criminal offences the acts covered by the Smuggling of Migrants Protocol and the United Nations Convention against Transnational Organized Crime, including by introducing appropriate sanctions proportionate to the nature and gravity of the offence, as follows:

(a) To consider establishing aggravating circumstances to the relevant offences, in accordance with article 6, paragraph 1, of the Smuggling of Migrants Protocol, including those aggravating circumstances contained in article 6, paragraph 3, of the Smuggling of Migrants Protocol, specifically, circumstances that endanger or are likely to endanger the lives or safety of the migrants concerned or that entail inhuman or degrading treatment, including for exploitation, of such migrants;

(b) To ensure, where appropriate, that, in investigating and prosecuting the smuggling of migrants, the undertaking of concurrent financial investigations is considered with a view to tracing, freezing confiscating as well as returning proceeds acquired through such crime in accordance with Article 14 of the UNTOC, and to consider the smuggling of migrants as a predicate offence of money-laundering, in accordance with domestic law and applicable international obligations;

3. *Urges* States parties to take, in accordance with the Protocol and consistent with their obligations under international law, all appropriate measures, including legislation if necessary, to preserve and protect the rights of persons who have been the object of conduct set forth in Article 6 of the Protocol as accorded under applicable international law, in particular the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;

4. *Also urges* States parties to the Protocol, to respect the rights accorded to smuggled migrants as set forth in the Protocol, irrespective of their migration status, nationality, gender, ethnicity, religion or age, and encourages Member States to share their views, information and good practices with regard to the measures taken for the protection of the human rights of smuggled migrants;

5. *Encourages* Member States to mainstream a gender perspective into migrant smuggling prevention policies, programmes, legislation and other actions to, inter alia, more effectively counter this crime and protect the rights of migrants, by undertaking an analysis of gender specific needs and circumstances, as well as by soliciting contributions from impacted groups;

6. *Encourages* all States to effectively promote and protect the human rights and fundamental freedoms of migrant children, including adolescents and those unaccompanied, regardless of their migration status, and bearing in mind their best interests, and to address international migration through international, regional or bilateral cooperation and dialogue and through a comprehensive and balanced approach, recognizing the roles, challenges, and responsibilities of countries of origin, transit and destination in this regard avoiding approaches that might aggravate their vulnerability, particularly in the wake of the coronavirus disease (COVID-19) pandemic;

7. *Encourages* Member States to enhance international and multilateral cooperation to address the smuggling of migrants;

8. *Further urges* Member States to take appropriate measures to build trust with smuggled migrants, in particular those who have been victims of violent crimes, including measures to provide effective protection for witnesses in criminal proceedings in accordance with article 24 of the Organized Crime Convention, in order to facilitate their cooperation with law enforcement officials;

9. *Encourage* Member States to increase public awareness of the criminal nature of the smuggling of migrants and the risks relating to irregular migration with the cooperation of relevant stakeholders and other elements of civil society as appropriate;

10. *Also encourages* Member States to take into consideration and, where appropriate, consider implementing the recommendations adopted by the Working Group on the Smuggling of Migrants at its meetings held from 11 to 13 September 2019 and on 8 and 9 September 2020, contained in the reports on those meetings;

11. *Further encourages* Member States to continue to promote, facilitate and support the widest measures of technical assistance, including material support and training and equipment as defined by the Protocol, to Member States, upon request, based on their needs and priorities, and support the efforts of the United Nations Office on Drugs and Crime, INTERPOL, and other partners that work to strengthen the capacity of States to prevent, criminalize, investigate and prosecute the smuggling of migrants, and to protect the rights of migrants who have been the object of smuggling, including through making use of technical guidance materials such as the Model Law against the Smuggling of Migrants and the Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants, developed by the United Nations Office on Drugs and Crime;

12. *Requests* Member States to address challenges in combating the smuggling of migrants resulting from the coronavirus disease (COVID-19) pandemic, including, as applicable, through the full and effective use of the United Nations Convention Against Transnational Organized Crime and the Protocols thereto⁴ and enhanced cooperation at the regional and international levels to respond to trends in the smuggling of migrants caused by the pandemic, while also making use of lessons learned to help the international community better address any future emergencies;

13. *Requests* the United Nations Office on Drugs and Crime to continue its technical assistance and capacity-building efforts, while avoiding undue duplication and overlap of efforts, to assist States parties, upon request, in implementing the Smuggling of Migrants Protocol, and to assist Member States, upon request, in ratifying or acceding to the Smuggling of Migrants Protocol;

14. *Calls upon* States, as appropriate, to strengthen the integrity and security of their identity and travel documents and their capacity to detect fraudulent documents, to further cooperation with each other, to enhance their efforts to stem the misuse of identity and travel documents, including by sharing information on stolen and lost travel documents through the INTERPOL Stolen and Lost Travel Document (SLTD) database, and the provision of technical assistance, based on the needs and priorities identified by requesting States, in this regard;

15. *Calls Upon* Member States to consider establishing and maintaining, as appropriate, direct channels of communication between border control agencies, enhancing law enforcement cooperation, strengthening the capacity of law enforcement agencies and taking other measures contemplated in article 27 of the Organized Crime Convention to achieve those goals;

16. *Urges* Member States to use, to the fullest extent possible, mutual legal assistance and other forms of cooperation between the central authorities and other competent authorities of countries of origin, transit and destination in cases involving

⁴ United Nations, Treaty Series, vols. 2225, 2237, 2241 and 2326, No. 39574.

the smuggling of migrants, considering, inter-alia, as appropriate, appointing liaison officers, magistrates or prosecutors;

17. *Encourages* States parties to use the Convention as a legal basis, as appropriate, for international cooperation, in particular in the form of mutual legal assistance and extradition and recalls the related expertise and role of the United Nations Office on Drugs and Crime;

18. *Encourages* States to consider, in accordance with article 19 of the Organized Crime Convention as well as with relevant provisions of other applicable multilateral and bilateral instruments and domestic law, setting up joint investigative bodies to counter organized criminal groups active along migrant smuggling routes, and making use, as appropriate, of available technologies for these purposes;

19. *Also encourages* States to promote effective communication with consular officers, as appropriate and in accordance with the Protocol and the Vienna Convention on Consular Relations⁵, to facilitate assistance to smuggled migrants, and access to smuggled migrants who have been detained;

20. *Encourages* Member States to provide bilateral, regional and international training opportunities to enhance the capacities of national competent authorities to prevent and counter the smuggling of migrants and protect the rights of smuggled migrants, in accordance, where applicable, with the Protocol;

21. *Also encourages* Member States to continue to share best practices, experiences, information, as appropriate, challenges, as well as lessons learned in preventing and combating the smuggling of migrants including to gain a better understanding of region-specific trends, with the aim of better preventing and combatting the smuggling of migrants;

22. *Invites* Member States and other donors to provide extrabudgetary resources for these purposes in accordance with the rules and procedures of the United Nations;

23. *Requests* the Executive Director of the United Nations Office of Drugs and Crime to report to the Commission on Crime Prevention and Criminal Justice at its thirty-first session on the implementation of the present resolution.

⁵ Ibid. vol. 596, No. 8638.