

Resolution 5/3

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

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

Recalling the functions assigned to it in article 32 of the United Nations Convention against Transnational Organized Crime,¹ reminding States parties of all their obligations under the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime,² and recalling its decision 4/5 of 17 October 2008,

1. *Urges* Member 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;³

2. *Recalls* that, in accordance with article 2 of the Smuggling of Migrants Protocol, and in the context of a human rights perspective, the rights of smuggled migrants should be protected when implementing the Protocol;

3. *Decides* to strengthen international, regional and bilateral cooperation, including through technical assistance programmes, to promote full and effective implementation of the Smuggling of Migrants Protocol;

4. *Urges* States parties, in accordance with the Smuggling of Migrants Protocol, to promote or strengthen, as appropriate, programmes and cooperation at the national, regional and international levels in support of regular migration and of deterring irregular migration so as to prevent and combat the smuggling of migrants;

5. *Urges* States parties to develop or strengthen, as appropriate, laws to maximize opportunities for international cooperation, including in extradition and mutual legal assistance, and to prosecute migrant smugglers;

6. *Bears in mind* that smuggling of migrants and trafficking in persons are distinct crimes that may in some cases share some features but that in most cases require separate legal, operational and policy responses;

7. *Underlines* the need to provide migrants with humane treatment and full protection, in accordance with the Smuggling of Migrants Protocol, mindful in that regard that States parties are obliged, in accordance with article 16 of the Protocol, to take all

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

² *Ibid.*, vol. 2241, No. 39574.

³ *Ibid.*

appropriate measures to protect the rights of persons who have been the object of smuggling in accordance with the Protocol, in particular the right to life and the right not to be subjected to torture or other cruel, inhumane or degrading treatment or punishment;

8. *Recalls* the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World,⁴ adopted by the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, and invites Member States to take immediate steps to incorporate into international crime prevention strategies measures to prevent, prosecute and punish crimes involving violence against smuggled migrants, including when such violence is associated with organized crime;

9. *Welcomes* the outcome of the consultations of Government experts held during the fifth session of the Conference and decides to establish an open-ended intergovernmental interim working group, in accordance with article 32, paragraph 3, of the United Nations Convention against Transnational Organized Crime,⁵ and rule 2, paragraph 2, of the rules of procedure of the Conference, to be chaired by a member of the Bureau, to advise and assist the Conference in the implementation of its mandate with regard to the Smuggling of Migrants Protocol;

10. *Notes* the publication of the United Nations Office on Drugs and Crime's *Model Law against the Smuggling of Migrants and the Basic Training Manual on Investigating and Prosecuting the Smuggling of Migrants*, and invites States to utilize those materials in developing their capacity to address the smuggling of migrants;

11. *Acknowledges* the efforts made in 2009 and 2010 by the United Nations Office on Drugs and Crime to build State capacity through several regional training workshops on investigating and prosecuting the smuggling of migrants, and encourages States to support, as a priority, the continuation of such workshops;

12. *Recognizes* the ongoing work of the expert group meetings hosted by the United Nations Office on Drugs and Crime to elaborate an in-depth manual on investigating and prosecuting the smuggling of migrants;

13. *Notes* the publication of the issue papers prepared by the United Nations Office on Drugs and Crime entitled "A short introduction to migrant smuggling"⁶ and "Migrant smuggling by air"¹⁵ and the expert group meetings on those topics, and requests the Secretariat to convene an expert group meeting to prepare an issue paper on the smuggling of migrants by sea;

14. *Also notes* the recent publication of the *Guide for the Development of Forensic Document Examination Capacity*⁷ and the December 2009 expert group meeting on that topic;

⁴ A/CONF.213/18, chap. I, resolution 1.

⁵ United Nations, *Treaty Series*, vol. 2225, No. 39574.

⁶ Available from www.unodc.org.

⁷ United Nations publication, Sales No. E.10.IV.8.

15. *Notes* that the implementation of laws and policies related to the smuggling of migrants is complex and necessarily involves multiple agencies, and recommends that States parties establish or strengthen, as appropriate, inter-agency coordination;

16. *Urges* States parties to strengthen measures, as outlined in the section on prevention, cooperation and other measures of the Smuggling of Migrants Protocol, to prevent smuggling of migrants and increase the sharing of information between States parties and relevant authorities;

17. *Reinforces* the importance of States parties, pursuant to articles 12 and 13 of the Smuggling of Migrants Protocol, ensuring the integrity and security of travel or identity documents and verifying, within a reasonable time, the legitimacy and validity of such documents suspected of being used to smuggle migrants;

18. *Calls upon* the Secretariat, in coordination with States parties, to develop tools to assist States parties seeking to strengthen the integrity and security of travel and identity documents and promote cooperation among States parties with the goal of stemming the misuse of travel or identity documents;

19. *Reinforces* the importance of States parties, pursuant to article 11 of the Smuggling of Migrants Protocol, without prejudice to international commitments in relation to the free movement of people and based in the spirit and traditions of the Protocol, strengthening, to the extent possible, border controls as may be necessary to prevent and detect the smuggling of migrants;

20. *Calls upon* States parties 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;

21. *Requests* the Secretariat to report to it, at its sixth session, on activities at the international and regional levels to promote and support the implementation of the Smuggling of Migrants Protocol, in coordination with relevant regional and international organizations;

22. *Decides* that the open-ended intergovernmental interim working group established in paragraph 9 above should hold consultations during the sixth session of the Conference in order to exchange information on, inter alia, experiences and practices on the implementation of the Smuggling of Migrants Protocol;

23. *Requests* the Secretariat to regularly keep the States parties informed on the above-mentioned matters;

24. *Invites* Member States and other donors to provide extrabudgetary resources for the purposes outlined in the present resolution, in accordance with the rules and procedures of the United Nations.