

# **Constructive dialogue on the review process following the conclusion of the tenth session of the Working Group on the Smuggling of Migrants in accordance with paragraph 53 of the Procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocols thereto**

Summary by the Co-Chairs

## **I. Introduction**

1. At its ninth session, in October 2018, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime established the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto<sup>1</sup> through Conference [resolution 9/1](#), which included in its annex the procedures and rules for the functioning of the UNTOC review mechanism.

2. According to paragraph 53 of the procedures and rules for the functioning of the UNTOC review mechanism and in accordance with article 32, paragraph 3 (c), of the Organized Crime Convention, constructive dialogues with relevant stakeholders, including non-governmental organizations, will be convened as a regular practice, following the conclusion of the sessions of the working groups and the adoption of the reports. The constructive dialogues aim to promote fruitful engagement with relevant stakeholders. They allow for briefing participants on the development and outcomes of the review process, and for collecting inputs and suggestions from participants, including their contributions on ways to improve the implementation of the Convention and the Protocols thereto.

3. The second constructive dialogue on the smuggling of migrants took place on 9 October 2023, for a full day, in a hybrid format combining online and in-person participation, after the conclusion of the tenth session of the Working Group on the Smuggling of Migrants. It was chaired by the Co-Chairs of the Working Group, Ms. Vasiliki Kakosimou, Head of the Directorate of Support of Asylum Service at the Greek Ministry of Migration and Asylum, and Mr. Francesco Testa, Prosecutor at the European Public Prosecutor Office (EPPO). Forty non-governmental organizations and four other relevant stakeholders (three from academia and one from the private sector) participated in the constructive dialogue, in addition to thirty-eight Member States. Written comments received in accordance with paragraph 53 of the procedures and rules for the functioning of the UNTOC review mechanism were made available on the dedicated [webpage](#).

4. This document contains a summary of discussions at the constructive dialogue, prepared by the Co-Chairs of the tenth session of the Working Group.

## **II. Opening**

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<sup>1</sup> Hereinafter: UNTOC review mechanism.

5. The Co-Chairs delivered introductory remarks and expressed their strong confidence that the UNTOC review mechanism will greatly benefit from the contributions of relevant stakeholders, including non-governmental organizations, academia and the private sector.

### **III. Briefing on the developments and outcomes of the review process**

6. Under agenda item 2, the secretariat shared an overview of the status of the review process, which had been launched in October 2020 through Conference [resolution 10/1](#), after a two-year preparatory phase. A status report on the progress of the UNTOC review mechanism had also been shared with the Working Group ([CTOC/COP/WG.7/2023/3](#)). The overview included information on the support provided by the United Nations Office on Drugs and Crime (UNODC) to States parties in the review process and to non-governmental stakeholders in it, including through the dedicated “Stakeholder Engagement for the Implementation of the United Nations Convention against Transnational Organized Crime” (SE4U) project.

7. During the following discussion, participants shared their views and concrete suggestions on the ways in which non-governmental stakeholders could support the UNTOC review mechanism as well as on the need to build trust between governments and non-governmental stakeholders. Participants discussed the voluntary sharing of responses to the self-assessment questionnaires (for the review of the implementation of the Convention and its Protocols) by States parties, via the publicly accessible website of the mechanism, as a way to enhance transparency and provide opportunities to share knowledge on and foster engagement in the process. Participants further welcomed the growing participation of non-governmental stakeholders in the constructive dialogue as well as the increased presence of States representatives. Participants also expressed a shared desire to foster an inclusive dialogue among all stakeholders, noting that multi-stakeholder collaboration plays a crucial role in designing comprehensive and effective responses to organized crime and, in particular, to the smuggling of migrants.

### **IV. Spotlight on the topics of the 10th session of the Working Group on the Smuggling of Migrants**

8. Under agenda item 3, the Co-Chairs briefed participants on the developments and outcomes of the tenth session of the Working Group on the Smuggling of Migrants, that was held on 5 and 6 October 2023.

9. The agenda item offered non-governmental stakeholders the opportunity to share inputs and suggestions on ways to improve the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, with a specific focus on the topics that were discussed during the tenth meeting of the Working Group on the Smuggling of Migrants. These were: (a) developments, challenges and best practices in preventing and combating the smuggling of migrants by sea; and (b) determining who to charge with the crime of migrant smuggling – who is and who isn’t a migrant smuggler?

10. A video about the efforts by UNODC to integrate the perspective of civil society into the implementation of the UNTOC, through the SE4U project, was played prior to the discussions.

11. Two panel discussions with a total of 8 representatives of non-governmental organizations addressed the two substantive items.

12. The first panel discussed developments, challenges and best practices in preventing and combating the smuggling of migrants by sea.

13. The first panellist, from the Mixed Migration Centre (MMC), outlined the latest trends and patterns of migrant smuggling at sea and lessons learned from these. He described the results of a survey undertaken by MMC through 48,415 interviews of migrants. While 68% of interviewees had used the services of smugglers during their journey, only 8% reported that smugglers played a role in the decision-making process and 36% stated that they were somehow misled by smugglers. However, 66% acknowledged that smugglers had helped them achieve their goal of migrating to another country. Border crossing, dealing with authorities and transportation were among the top services provided by smugglers. On abuse and violence, smugglers were the most commonly reported perpetrators (47%) in the survey, followed by criminal gangs and military/police. The panellist added that there were notable differences by region, as, for example, less people used smugglers in Latin America and the Caribbean than in Asia.

14. The panellist from the Regional Support Office of the Bali Process shared analysis of how existing anti-smuggling legislation, policies and practices uphold the rights of migrants and refugees at sea. She stated that while national anti-smuggling legislation in the 21 States of the Bali Process should be aligned with the Smuggling of Migrants Protocol, they sometimes lacked the non-liability clause for smuggled migrants and instead criminalized the migrants who were the object of smuggling. She suggested a more nuanced approach to migrant smuggling was needed to safeguard the rights of people fleeing conflict, violence, and persecution, and stated that law enforcement officials need a more robust understanding of the enterprise structure, supply chain, and dynamics of a smuggling venture. Further, she elaborated on the involvement of civil society in supporting the prevention of loss of lives at sea, and recalled that assisting people in distress at sea is the duty of all States and all shipmasters, and is enshrined in international law, as set out in core maritime conventions. She regretted that, often, civil society entities need to fill gaps in humanitarian emergencies, including those in the maritime domain, by engaging in search and rescue operations. She concluded by noting that some civil society organizations had provided training to shipmasters on how to better undertake search and rescue operations.

15. The panellist from the Centre for the Study of Crime underlined in her presentation what should be done to ensure accountability for infringements of international obligations at sea during counter-smuggling operations. She noted that accountability can only come with clearly defined roles and responsibilities. In this regard, States must ensure that their law enforcement agencies and naval forces involved in counter-smuggling operations are aware of their responsibilities and operate within the bounds of international law, which includes respecting the principle of non-refoulement. Transparent and independent mechanisms to investigate tragedies at sea should be established, she advised. Further, she underlined how essential regional cooperation is, and added that it should be guided by a victim-centred approach, providing smuggled migrants with access to legal assistance, justice, and medical care. In conclusion, she noted that the root causes of migrant smuggling should not be overlooked when addressing this issue.

16. Finally, the panellist from the Counter Human Trafficking Trust – East Africa (CHTEA) elaborated on how a whole of society approach can support efforts to identify, refer and assist victims of crime among smuggled migrants in a vulnerable situation. He added that this entails an inclusive approach involving all relevant actors, such as civil society, diaspora, trade unions, the media, national human rights institutions and migrants. In conclusion, he made two observations, namely that States need to increase

the budget allocation to train law enforcement and support them in their efforts to align their practice to the Convention against Transnational Organized Crime and its Smuggling of Migrants Protocol. He noted the importance of adopting an inclusive, safe, and sustainable approach, which is gender-responsive and respectful of diversity, applicable from the beginning to any actions undertaken.

17. Following the panellists' presentations, the floor was opened for an exchange of additional information with panellists and participating delegates in response to several questions and comments. One speaker highlighted the difficulties to migrate when no regular pathways exist. Several speakers discussed the various drivers of migration and noted that despair often drives people away from their home. A speaker stressed that the highest reported drivers of migration movements are economic reasons. Violence and the lack of human rights were also largely mentioned by interviewed migrants as drivers of migration, together with the need to access work and livelihood opportunities.

18. Several speakers stressed that people regularly have no choice but to resort to smugglers and often suffered high rates of violence in their hands. The difference between human traffickers and smugglers was noted as being often difficult to establish for smuggled individuals, as migrants and refugees may get trafficked and detained during the smuggling process.

19. A speaker noted that the involvement of public officials is high in the migrant smuggling process, especially at the stage of crossing borders. Incidents of violence by public officials were also frequently reported. He also stressed that data on these issues exists but is not sufficiently used for policy and actions.

20. One speaker noted that in her experience, migrants do not know what the perils of smuggling are or how to mitigate risks of violence. She suggested that, oftentimes, official information is seen as having the objective of discouraging migration and is thus not trusted, unlike information stemming from the diaspora and other migrants, which constituted more trusted sources. However, despite the risks mentioned by others or after having experienced violence themselves, the large majority of migrants declare that they would redo it again if they had to. The knowledge of these risks did not act as a deterrent, one speaker concluded.

21. The second group of panellists focused on determining who to charge with the crime of migrant smuggling.

22. The first panellist, from the Global Initiative Against Transnational Organized Crime, addressed the question of who the actors involved in the smuggling of migrants are and what their roles and *modi operandi* are. She stressed that smuggled migrants themselves sometimes play an active role in the smuggling process and that since 2016, they are increasingly forced or incentivized to do so, thereby limiting the involvement of and risks for smugglers, for example by piloting boats. She noted with concern that this involvement compromises the non-liability principle for smuggled migrants, by making them an active part of the process. Placing more attention on the financial transactions and on investigating and charging high-level smugglers could be a way to mitigate this, she added. She also mentioned corruption as an essential element of migrant smuggling and noted that more focus needs to be placed on the role of State actors. In conclusion, she noted with concern the hardening of borders, which does not result in regulating migration but only in attracting more criminal groups to smuggle migrants in more difficult conditions. Another challenging aspect of this is that it reinforces the perception of local populations that migration is a negative phenomenon.

23. The panellist from the Global Hope Mobilization (GLOHOMO) explained that migrant smuggling legal provisions are understood more as a

criminal justice tool than a migration management tool in practice. In the experience of GLOHOMO, migrants are viewed as criminals once intercepted, and are often prosecuted. She noted that training could enhance skills and capacities of law enforcement officers to investigate and detect cases. She also noted that in her experience the cooperation between civil society, State officials and local community leaders to address the smuggling of migrants and related corruption had improved.

24. The panellist from the Africa Group for Justice and Accountability (AGJA) reminded the audience that migration responses must be embedded in the broader human rights framework. She noted the need to differentiate between smuggling of migrants and human trafficking as confusion persisted. She also noted the importance to dissociate between smugglers and smuggled migrants and apply the non-liability principle for smuggled migrants. She underlined that cooperation and partnerships are essential to fight this crime and avoid the issue becoming too politicised. In conclusion, she observed that further investment could be made at the local level to offer more opportunities for young people to work, which would help address the root causes of migration.

25. The panellist from Citizens for a Common Cause explained how civil society can collaborate with State actors to ensure that smuggled migrants are not charged with criminal offences for the fact of being smuggled. Awareness raising and training on human rights is the most effective way to distinguish smugglers and smuggled migrants, and not criminalize the latter. She described several challenges in upholding migrants' rights, such as the criminalization of migration, the detention of irregular migrants, which exposes them to violations of their human rights, the lack of trust in the authorities, causing underreporting, as well as the presence of organized criminal groups along the routes, at times leading to kidnapping, forced recruitment, disappearance, and murder. In Latin America and the Caribbean, the links between smuggling and other expressions of organized crime such as human trafficking for forced labour or sexual exploitation, arms trafficking and cybercrime, such as extortion and virtual kidnapping, have been well documented, she concluded.

26. In the ensuing discussion, speakers discussed the importance for migrants to be able to report crime and for States to uphold their rights. A speaker added that forced marriage and religious conversion constituted additional drivers of migration.

## **V. Collection of inputs and suggestions from participants and provision of information on relevant activities, including those related to meeting technical assistance needs**

27. Under agenda item 4, participants had the opportunity to share inputs and suggestions on ways to improve the implementation of the Organized Crime Convention and the Protocol against the Smuggling of Migrants by Land, Sea and Air, including reporting on their activities and responses to States parties' technical assistance needs. After an introductory video on the importance of gender equality and human rights in the prevention and fight against transnational organized crime, the Co-Chairs steered the discussion, which was structured along three points: (a) the role of civil society in the universalization and implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air; (b) States Parties' technical assistance needs and related civil society engagement/participation; and, (c) gender, human rights and victim-centred approaches to countering organized crime, in particular the smuggling of migrants.

28. Several speakers welcomed the overall growth in participation in the constructive dialogues in 2023 and underscored the key role of civil society in contributing to the Smuggling of Migrants Protocol's implementation. Some speakers expressed regret concerning the absence of civil society in the sessions of the Working Group on the Smuggling of Migrants as well as about the delays occurring in the UNTOC review process.

29. Some speakers underscored the importance of addressing the global challenge of migrant smuggling through a multi-sectorial approach, which includes promoting labour mobility; expanding the availability of pathways for regular migration; addressing the root causes of migrant smuggling; and ensuring the protection of migrants' rights in the implementation of responses to migrant smuggling.

30. Several speakers emphasized the importance of awareness-raising campaigns, and stressed the need to tailor them to potential human trafficking victims among people on the move who might be unaware of risks when embarking on smuggling journeys.

31. One speaker highlighted the significance of community-based initiatives that foster social inclusion, enhance educational opportunities, and support young entrepreneurs. These initiatives constitute effective strategies to prevent migrant smuggling.

32. Some speakers underscored the key role of civil society organizations in establishing trust with smuggled migrants. The speakers referred to the trust-building process as vital in encouraging migrants to cooperate in prosecuting criminals engaging in migrant smuggling.

33. One speaker highlighted the need to increase the capacity of investigators and criminal justice systems to correctly identify migrant smugglers and, consequently, not criminalize migrants for the fact of having been smuggled.

34. Several speakers emphasized the imperative of international cooperation in responding to a crime that is transnational in nature such as migrant smuggling, recognizing it as a fundamental prerequisite for the effective implementation of the Smuggling of Migrants Protocol.

35. Several speakers stressed the importance of evidence-based threat assessments, data-backed strategies, and a comprehensive understanding of migrant smuggling dynamics to more effectively address the complex challenges posed by the crime.

## **VI. Observations by the Co-Chairs based on the discussions held during the constructive dialogue**

36. Based on the discussions held during the constructive dialogue, the Co-Chairs have identified the following observations:

37. States parties should integrate policies and practices aiming to criminalize migrant smugglers with robust actions for the protection of migrants, effectively addressing crime while safeguarding migrants' safety, dignity and human rights.

38. States parties should better identify victims of crime among smuggled migrants and apply an inclusive, safe, and sustainable approach to their fight against migrant smuggling, which is gender-responsive and respectful of diversity, and is embedded in human rights, from the beginning of any actions undertaken.

39. In cooperation with UNODC and relevant stakeholders, States parties should provide capacity-building for frontline responders, humanitarian organizations, and human rights groups to effectively identify cases of human trafficking among people on the move.
40. States parties should not hold smuggled migrants liable for the fact of having been smuggled (non-liability principle) and train law enforcement to distinguish between smuggled migrants and smugglers.
41. States parties and non-governmental stakeholders should closely cooperate to develop and implement tailored awareness-raising campaigns that better inform potential migrants of the illegal and risky nature of migrant smuggling in order to curb the business of criminals engaging in it and save lives.
42. States parties should focus more attention on financial transactions related to the smuggling of migrants and make investigating high-level smugglers a priority.
43. States parties should invest more effort into local, community-based initiatives that create education, entrepreneurship opportunities and employment for youth, and thus contribute to reducing and preventing migrant smuggling and irregular migration more generally.

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