



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

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**Review of the implementation of the United Nations  
Convention against Transnational Organized Crime  
and the Protocols thereto: information-gathering and  
possible mechanisms to review implementation; expert  
consultation on criminalization; expert consultation  
on the protection of victims and witnesses**

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

### **Report of the Secretariat**

#### **I. Introduction**

1. By its resolution 55/25 of 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime<sup>1</sup> and two supplementary protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>2</sup> and the Protocol against the Smuggling of Migrants by Land, Sea and Air.<sup>3</sup> The Migrants Protocol entered into force on 28 January 2004, pursuant to its article 22, paragraph 1. Consideration of its implementation was therefore included in the agenda of the first session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime (CTOC/COP/2004/1).

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\* CTOC/COP/2008/1.

<sup>1</sup> United Nations, *Treaty Series*, vol. 2225, No. 39574.

<sup>2</sup> *Ibid.*, vol. 2237, No. 39574.

<sup>3</sup> *Ibid.*, vol. 2241, No. 39574.



2. In its decision 1/6, the Conference decided that its programme of work with respect to the Migrants Protocol would be as follows:

(a) Consideration of the basic adaptation of national legislation in accordance with the Migrants Protocol;

(b) Commencement of the examination of criminalization legislation and difficulties encountered in the implementation of article 6 of the Migrants Protocol;

(c) Enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Migrants Protocol;

(d) Exchange of views and experience gained in the implementation of articles 15 and 16 of the Migrants Protocol.

3. The present report is an updated version of the analytical report on the implementation of the Migrants Protocol that was submitted to the Conference at its second session (CTOC/COP/2005/4 and Corr.1). It contains consolidated information and is a first analysis of all the replies received from States to the relevant questionnaire disseminated by the Secretariat. Further, it highlights the progress made towards meeting the requirements set out in the Migrants Protocol and the difficulties that States sometimes face in implementing its provisions.

4. The Open-ended Interim Working Group of Government Experts on Technical Assistance, at its meeting held in Vienna from 3 to 5 October 2007, requested the Secretariat to develop immediately an efficient and user-friendly information-gathering tool in the form of an interim computer-based checklist (for additional information, see CTOC/COP/2008/2). After the checklist was finalized and sent to States parties and States signatories on 21 May 2008, 6 additional replies and 15 updates were received. As at 8 August 2008, the Secretariat had collected responses to the questionnaire from 80 Member States, of which 67 were parties, 8 were signatories and 5 were non-signatories to the Migrants Protocol. Many of those States also provided copies of their relevant legislation (see annex I). The list of States whose responses had been received by the time of drafting and are reflected in the present report can be found in annex II. It should be noted that in cases in which no update was received, the responses submitted previously were assumed to still be valid.

## **II. Analysis of national legislation and measures in relation to the relevant provisions of the Protocol against the Smuggling of Migrants by Land, Sea and Air**

### **A. Definitions and criminalization requirements**

#### **1. Criminalization of the smuggling of migrants**

5. The Migrants Protocol requires States parties to establish as a criminal offence the smuggling of migrants, when committed intentionally and in order to obtain, directly or indirectly, a financial or other material benefit (art. 6, para. 1 (a)).<sup>4</sup> Most

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<sup>4</sup> According to article 3 (a) of the Migrants Protocol, smuggling of migrants means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of

of the responding States reported that they had adopted the necessary legislative measures to criminalize this activity. Of the countries that gave a negative response on this issue, Tajikistan noted that the problem of smuggling of migrants had not been experienced and therefore there was no need to adopt specific legislation to address it. Algeria, Costa Rica, South Africa and Togo reported that the relevant legislation was to be developed. Action to that effect had been undertaken in Costa Rica, where specific legislative amendments in the penal code had been proposed to provide for criminalization of the offence and related confiscation measures. Angola, Chile and the Congo reported that there was still no implementing legislation in force that would, inter alia, establish the smuggling of migrants as a criminal offence. In that regard, Chile made reference to the possibility of integrating the crimes established by the Migrants Protocol in a new penal code that was being prepared. In addition, other countries (Egypt, Jamaica, Nigeria and United Republic of Tanzania) indicated that specific legislation was not in force, but the constituent elements of the offence were contained in other legislation (concerning passports, aliens and immigration). Cameroon and the Congo reported that national legislation criminalized not the smuggling of migrants per se, but other acts, such as procuring, illegal arrest, kidnapping and slavery. In one country (Maldives), smuggling of migrants was not dealt with by specific legislation, but by various rules and practices followed by the immigration authorities, which had the status of law under the Constitution; however, the same country reported that a draft immigration law had been prepared and was under review prior to submission to the parliament. Ireland indicated that domestic legislation dealing with the smuggling of migrants was in place and confirmed that a new law would be enacted to ensure full compliance with the requirements of the Protocol. Guinea and Madagascar noted that a new bill was also being drafted to that effect.

6. The majority of the States responding that smuggling of migrants was criminalized under their national legislation stated that the offence concerned was defined in their domestic legal system in accordance with the definition of the Migrants Protocol. An overview of the replies received reflected a common denominator of national legislative approaches, in that the proscribed criminal conduct involved the procurement of the entry of a person into the territory of the country where that person was not a national or permanent resident and where any or all of the requirements for legal entry had not been complied with.

7. Some States (Czech Republic, Finland, Netherlands and United States of America) indicated that they had adopted a broader concept of the smuggling of migrants offence without requiring the element of “financial or other material benefit”. One country (Argentina) reported on its national legislation and noted that it defined the offence of the smuggling of migrants “in a more extensive manner” than the Migrants Protocol to cover cases related not only to the facilitation of the entry into the national territory, but also the promotion and “realization” of such an entry. In this connection, it is noted that article 34, paragraph 3, of the Convention, which applies, *mutatis mutandis*, also to the Migrants Protocol, enables States parties to adopt more strict or severe measures to prevent and combat transnational organized crime and the smuggling of migrants.

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the illegal entry of a person into a State party of which the person is not a national or a permanent resident.

8. Although the Convention clarifies that the transnational nature of a crime need not be considered a constituent element of acts viewed as offences under domestic law, including those established in accordance with the Migrants Protocol (see art. 34, para. 2, of the Convention in conjunction with art. 1, para. 2, of the Protocol), the fact that smuggling of migrants is a criminal act involving transborder activity is appropriately reflected in the domestic laws of States responding to the questionnaire. Since the specific transnational aspect, as set out in the Convention (see art. 3, para. 2), is not considered essential, it appears that such an aspect would not constitute an element in the prosecution, at the national level, of cases of smuggling of migrants.

9. The same applies to the organized crime aspect, which is likewise not required as an element of the offence either in national legislation or, subsequently, as a fact that must be proved in the context of prosecution at the national level. It is noted, however, that whether or not the smuggling of migrants is committed by individuals or persons associated with an organized criminal group, the primary focus of the Protocol is to address the criminal exploitation of migration and the generation of illicit profits from the procurement of the illegal entry in the territory of a State.

## **2. Distinction from trafficking in persons**

10. Most States responding to the questionnaire indicated that trafficking in persons and smuggling of migrants were treated as distinct offences in their domestic legislation (see also the replies given by Member States in the context of the questionnaire on the implementation of the Trafficking in Persons Protocol, as reflected in a separate report (CTOC/COP/2005/3/Rev.2)). For example, Montenegro clearly defines the illegal crossing of the State border and the smuggling of people as criminal acts in article 405 of its criminal code, while trafficking in human beings is defined as a crime in article 444 of that code. A few exceptions were reported: some States (Burkina Faso, Congo and Myanmar) neither distinguished between the offences nor had legislation that addressed the issue of illegal trafficking in persons, no matter what means or purpose were involved (El Salvador); others had not enacted specific legislation to regulate the issue (Algeria, Cameroon, Jamaica and Maldives). The responses received by the Secretariat more or less reflected a convergence in national approaches concerning two constituent elements of trafficking in persons that were not present in smuggling of migrants cases: first, an improper form of recruitment, such as coercion, deception or some abuse of authority; and second, the element of obtaining a profit as a result of an exploitative purpose for which the trafficking had been undertaken, although it was not necessary for the purpose to have been fulfilled. The relevant provisions of the domestic legislation described in the replies, or attached thereto, indicated or implied consideration of the element of the voluntary nature of the conduct of smuggled migrants, as opposed to the case of the victims of trafficking in persons, the lack of intended exploitation as a substantive parameter in defining the relevant criminal conduct and the passage across a border as a requirement for establishing the offence of smuggling of migrants, which was not necessary for trafficking in persons.

11. In view of the above, it should be noted that while trafficking in persons and smuggling of migrants may differ, both represent overlapping crime problems. The competent law enforcement and prosecutorial authorities usually face actual cases

that may involve elements of both offences or may shift from one to the other, as many trafficked individuals begin their journey by consenting to be smuggled from one State to another and end up being tricked or coerced into exploitative situations. The replies received from Member States could be used as a springboard for further considering and discussing practical problems and difficulties encountered at the national level concerning the application of the existing legislative provisions and the actual prosecution of perpetrators involved in activities related to smuggling of migrants.

12. In addition, the relevant discussions could further identify priority areas for action aimed at dealing with those problems, such as provision of assistance to countries in need in order to put in place or review domestic legislation that would encompass the requirements established by both the Migrants Protocol and the Trafficking in Persons Protocol; and identification of technical assistance devices and mechanisms, for example the provision of legal advisory services by the Secretariat on an ad hoc basis or the dissemination of guidance manuals or compilations of best practices that would enable the competent authorities of Member States to assess available crime evidence in the best way possible and thus effectively deal with complicated cases involving imperceptible differences between trafficking in persons and smuggling of migrants offences.

### **3. Criminalization of facilitating illegal residence**

13. Article 6, paragraph 1 (c), of the Migrants Protocol establishes the obligation for States parties to criminalize any activities geared towards enabling a person to remain in a State where that person is not entitled to remain by virtue of status (nationality or right of permanent residence) or by virtue of having met other requirements, such as the issuance of a visa or another kind of permission. The vast majority of the States responding to the questionnaire stated that the conduct concerned was criminalized domestically either in the context of their penal code or within the framework of other specific legislation (immigration laws). One State (Czech Republic) reported that appropriate action had been taken with a view to amending existing legislation in order to cover this issue in a more comprehensive manner. Another State (Congo) indicated that its legislation recognized complicity in relation to illegal entry into the country and not the facilitation of illegal residence in the national territory. In general terms, the criminal offence of facilitating illegal residence was perceived by Member States to be a necessary supplement of the offence of smuggling of migrants, so that effective legislative response was ensured in cases where the entry of the migrants in the national territory of each State had taken place legally, but then illegal means were involved to enable residence for reasons other than those used for entry or beyond the length of time initially approved or authorized.

### **4. Offences in relation to travel or identity documents for the purpose of facilitating the smuggling of migrants**

14. Article 6, paragraph 1 (b), of the Migrants Protocol establishes a series of offences related to the use of travel and identity documents for the purpose of enabling the smuggling of migrants. Almost all States responding to the Secretariat's questionnaire confirmed that acts of producing, procuring, providing or possessing such documents to that effect were criminalized in their domestic

legislation. The only exception was attributed to the non-criminalization of the basic offence of the smuggling of migrants as such (in Chile). Different options and approaches were reflected in the replies only in terms of the legislative context used for penalizing such acts. Some countries reported inclusion of criminal offences related to travel or identity documents in their specific legislation against the smuggling of migrants, while others clarified that the general provisions of their penal code or their immigration legislation on forgery and general misuse and falsification of documents were applicable to cases involving smuggling of migrants (Canada, El Salvador, Estonia, Finland, Peru and Sweden). In general terms, the responses received indicated that national legislation treated these offences either as separate offences within the broader context of the criminal activity concerned or as a preparatory step for the commission of the principal offence(s) of the smuggling of migrants and/or facilitating illegal residence, which could be dealt with by virtue of provisions on attempt and/or complicity to commit the offences (for example, Sweden). Bulgaria reported that the provisions on the misuse and falsification of documents contained in its penal code were also applicable in cases of smuggling.

15. Issues related to how national laws regulate the validity of documents and, more specifically, to whether documents used for the purpose of smuggling of migrants were falsely made, improperly issued or altered in some material way, were not dealt with in the questionnaire sent to Member States and therefore no specific information has been received on these issues. It was considered appropriate at this stage not to include these factual elements within the context of reviewing the basic adaptation of domestic legislation in accordance with the Migrants Protocol, since they are not critical for the formulation of offences under domestic law, in conformity with the Protocol. The Conference may wish to consider such aspects in subsequent stages of its work, in particular when dealing with the implementation of chapter III of the Protocol, on prevention, cooperation and other measures, including border measures and measures geared towards ensuring the security and control, as well as the legitimacy and validity, of travel or identity documents used in cases involving smuggling of migrants.

## **5. Criminalization of attempt to commit the offences established under the Protocol**

16. It should be noted that the obligation to criminalize the attempt to commit any of the offences established in the Migrants Protocol is subject to the basic concepts of the legal system of States parties (art. 6, para. 2 (a), of the Protocol). Most of the States replying to the questionnaire confirmed the establishment of criminal liability at the domestic level also for those involved in activities constituting an attempt to commit the three basic offences covered by the Protocol. An overview of the national responses on this issue demonstrates consistency in prosecuting attempts to perpetrate smuggling of migrants. Most of the States responding to the questionnaire had legislation in place allowing this option. Among the States providing a negative reply, Costa Rica specified that its legislation criminalized attempts to commit the offence of facilitating illegal residence, as well as offences in relation to travel or identity documents, but not attempts to commit the offence of smuggling of migrants, which, as mentioned above, had not yet been specifically established. Similarly, Chile and the Congo noted that the basic offence of smuggling of migrants was not established and therefore the attempt to commit such offence could not be criminalized. Furthermore, the Congo reported the non-criminalization of the attempt to falsify documents used for the purpose of enabling the smuggling

of migrants. Peru reported that attempts to commit the offence of smuggling of migrants were not punishable because that offence, as prescribed in the penal code, encompassed an element of finality and required the completion of the act concerned. Finland highlighted in its response the criminalization of some forgery offences linked to the basic offence of smuggling of migrants. Nicaragua reported that only the completed (not the unfinished) criminal act was punishable.

17. Furthermore, it was generally reported that the concept of attempt covered cases of acts committed in preparation of the criminal offence of smuggling of migrants. An exception to this existed only where specific legislation establishing the basic offence of the smuggling of migrants had not yet been put in place (Costa Rica). The definition of the concept of attempt, as well as issues related to the acts carried out in an unsuccessful attempt to commit the offences covered by the Protocol,<sup>5</sup> were regulated in accordance with the general provisions of national legislation on attempting to commit a criminal offence.

18. The information received from Member States could provide the opportunity for further discussion of potential problems that could arise from a narrow definition of preparation of the offence. In this context, consideration could be given to the criminalization of separate offences committed mainly at the initial stages of the smuggling process, with a view to avoiding impediments to prosecution where the smuggling was not completed.

#### **6. Criminalization of participating as an accomplice in the offences established under the Protocol**

19. Pursuant to article 6, paragraph 2 (b), of the Migrants Protocol, States parties are required to establish as a criminal offence participation as an accomplice in the main offences covered by the Protocol and, if it is not contrary to the basic concepts of their legal systems, in the acts of procuring, providing or possessing fraudulent travel or identity documents for the purpose of enabling the smuggling of migrants. Like the responses concerning attempt to commit the offences covered by the Protocol (see para. 16 above), the national responses with regard to the criminalization of participation as an accomplice in the offences covered by the Protocol demonstrated a high degree of consistency and uniformity. Only Chile and Costa Rica noted a lack of specific legislation on this point. Furthermore, issues related to participation as an accomplice in acts of procuring, providing or possessing a fraudulent travel or identity document for the purpose of the smuggling of migrants were regulated in accordance with the general provisions of the national laws on participation in the commission of a criminal offence and domestic prosecution could be initiated in such cases on the basis of the criminal evidence available.

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<sup>5</sup> See also the interpretative notes on article 6, paragraph 2, of the Migrants Protocol (*Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime Convention and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), p. 489).

**7. Criminalization of organizing or directing other persons to commit the offences established under the Protocol**

20. The Migrants Protocol creates an obligation for States parties to criminalize any acts of organizing or directing other persons to commit any of the offences covered by the Protocol (see art. 6, para. 2 (c)). Almost all States reported that domestic legislation to that effect had already been put in place. Belgium, Brazil, Chile and Costa Rica provided negative replies. Jamaica indicated that its legislation required the direct involvement of the persons concerned in the commission of the relevant offences. The responses on this issue could be considered jointly with the corresponding replies of Member States on the issue of organizing and directing serious crime committed by members of an organized criminal group (art. 5, para. 1 (b), of the Convention). It should be noted that the confirmed ability to establish at the domestic level the criminal liability of persons who give orders with a view to organizing or directing the commission of the principal offences involving smuggling of migrants, but who do not actually engage in the perpetration of the offences themselves, offers the advantage of dealing effectively with more organized schemes of smugglers of migrants without it being necessary to resort to the requirement of the involvement of an organized criminal group (see art. 34, para. 2, of the Convention).

**8. Sanctions and aggravating circumstances**

21. States parties to the Migrants Protocol are required to adopt sanctions within domestic law that take into account and are proportionate to the gravity of the offences covered by the Protocol (art. 11, para. 1, of the Convention in conjunction with art. 1, para. 2, of the Protocol). An overview of the replies received from Member States shows that a range of imprisonment terms are foreseen for the basic offence of smuggling of migrants in different States, but also that in most cases aggravating circumstances have been established so that more severe punishments can be imposed (see para. 23 below). Liability of legal entities involved in the smuggling of migrants and relevant security measures imposed on them were also reported (Turkey).

22. States parties to the Protocol are further obliged to provide for aggravating circumstances to some of the offences covered by the Protocol (smuggling of migrants, enabling illegal residence, producing a fraudulent travel or identity document and, subject to the basic concepts of their legal system, participating as an accomplice in or organizing or directing such offences) when the commission of such offences entails real or potential danger to the lives of the migrants concerned or their inhuman or degrading treatment, including their exploitation (art. 6, para. 3, of the Protocol). Almost two thirds of the States responding to this question confirmed the establishment of the above-mentioned aggravating circumstances at the domestic level.

23. On the one hand, different legislative techniques were reported on this issue in terms of providing for parallel offences (aggravated smuggling), resorting to the generally applicable aggravating circumstances of the penal code (for example, Finland and Iceland) or establishing an appropriate framework of sanctions enabling domestic courts to consider and impose more severe sentences where the aggravating factors were present. On the other hand, negative responses from some Member States reflected cases where the national legislation was silent (Chile,



Jamaica, Namibia and Nicaragua), the rules and practices followed were not comprehensive enough (Maldives) or the existing legislation was in the process of being amended to address the issue adequately (Czech Republic). Thailand also reported that its legislation on immigration did not cover any human rights aspect, nor did it identify any conduct establishing aggravating circumstances in accordance with article 6, paragraph 3, of the Migrants Protocol.

24. It should be noted that Member States also submitted information on further aggravating circumstances provided for in their legislation beyond the ones related to the treatment of smuggled migrants or on variations of those aggravating factors.<sup>6</sup> Such aggravating factors included, inter alia, the victim being a minor and the use of violence or torture, recidivist behaviour, habitual activity, involvement of an organized criminal group, abuse of authority or public functions for the purpose of smuggling, holding of a managerial position in a legal person involved in smuggling of migrants, smuggling of a large number of persons and association of the relevant offences with terrorist acts, money-laundering and drug trafficking.

25. The Conference could fulfil a productive role by offering an opportunity to exchange views and opinions on whether appropriate evidentiary standards and requirements are in place at the national level to make a clear distinction between smuggling of migrants and trafficking in persons where the aggravating condition is related to some form of exploitation of the smuggled migrants.

26. The Conference may wish to take into consideration national approaches and regulations on related issues in subsequent stages of its work, in particular when dealing with the implementation of chapter II of the Migrants Protocol and the measures taken by national authorities of States parties to ensure the safety, security and humane treatment of migrants smuggled by sea.

## **9. Treatment of smuggled migrants**

27. Since a key aim of the Migrants Protocol is to promote the criminalization of the smuggling of migrants and not migration itself, States parties are required not to subject smuggled migrants to any criminal liability for the fact of having been the object of the criminal conduct described in article 5 of the Protocol. At the same time, the Protocol does not preclude States parties from taking measures against such persons for violating other national administrative regulations or criminal law provisions (art. 6, para. 4). The vast majority of States responding to the questionnaire indicated that the illegal entry and residence of migrants in their territory entailed violation of immigration legislation and that such acts were treated as misdemeanours resulting in the imposition of criminal and/or administrative sanctions. Only El Salvador, Mexico, New Zealand and the former Yugoslav Republic of Macedonia reported that no criminal or administrative measure would be taken against smuggled migrants who had entered the State's territory illegally. Bulgaria underlined that smuggled migrants were to be treated as victims in the course of the criminal procedure. It was reported (by Algeria and Spain) that administrative measures (such as deportation) were used to return illegal migrants to their countries of origin. In this connection, Italy provided detailed information on

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<sup>6</sup> Article 34, paragraph 3, of the Convention, which applies, mutatis mutandis, also to the Migrants Protocol, enables States parties to adopt more strict or severe measures for preventing and combating transnational organized crime and the smuggling of migrants.

its legal framework regulating deportation. However, it was also pointed out (by Canada) that persons claiming refugee status could not be charged with certain offences while their claim was pending.

28. The information received in response to the questionnaire reflected a common desire to only make smuggled migrants criminally and/or administratively responsible for entering and residing illegally in the territory of Member States and not for their involvement in the smuggling process, their voluntary recruitment and, to some degree, their complicity in their own smuggling.<sup>7</sup>

29. The Conference may wish to consider other issues related to the treatment of smuggled migrants, especially in view of its decision 1/6, in which it decided to devote part of the discussions during the second session to issues associated with protection and assistance measures for smuggled migrants. In this connection, it should be recalled that, according to article 19 of the Migrants Protocol, the implementation of the Protocol at the national level should not affect the rights, obligations and responsibilities of States under international law, international humanitarian law and, in particular, refugee law and the principle of non-refoulement and therefore should not detract from the existing protections afforded to smuggled migrants who are also refugees or asylum-seekers.

30. Furthermore, in view of the fact that protective measures for smuggled migrants constitute a critical component in the effective detection, investigation and prosecution of relevant cases, the Conference of the Parties could further be used as a forum for discussing the establishment of witness and victim protection schemes and programmes, as suggested in the replies to the questionnaire submitted by El Salvador. Consideration could also be given to the special needs of smuggled women and children and to measures geared towards ensuring protection against gender-based violence, as proposed by Spain.

## **B. Difficulties encountered and assistance required**

31. Several States highlighted the lack of the necessary capacity, technical expertise and financial and human resources to address smuggling of migrants effectively as the main obstacles hampering the adoption of national legislation in this field. In this connection, a number of States reported that they needed technical assistance in order to overcome difficulties and practical problems in adapting their legislation to the requirements of the Migrants Protocol. Burkina Faso, Chad and Maldives identified training programmes for improving skills for drafting legislation and upgrading legal expertise as key components of such assistance. El Salvador stressed the importance of disseminating best practices and practical experience in the areas of investigation, operations and mutual legal assistance. El Salvador also highlighted the need for establishing procedural mechanisms to enable the confiscation of property derived from the smuggling of migrants and further concluding bilateral agreements or arrangements to that effect. Cameroon, Jamaica and South Africa emphasized that a priority area would be the provision of

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<sup>7</sup> In this connection, it should be recalled that an interpretative note on article 3 of the Migrants Protocol clarifies that the intention of the Protocol was to exclude from criminal liability the activities of those who provided support to migrants for humanitarian reasons or on the basis of close family ties (see *Travaux Préparatoires* ..., p. 469).

technical assistance in developing appropriate legislation. The Congo made specific reference to the need for training employees and promoting the computerization of services. Egypt stated that appropriate technical assistance should focus on upgrading equipment to prevent the falsification of documents used in the smuggling of migrants and providing expertise on ways to receive and treat smuggled migrants, as well as promoting training for law enforcement officers and administration to enhance knowledge on relevant legislation. Cameroon stressed the difficulty of relying on a variety of texts and on combining regional, national and subnational approaches. Algeria and Namibia also reported that their 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 Protocol.

### **C. Technical assistance provided**

32. A number of States provided information on technical assistance activities and programmes initiated either at the bilateral level or through international organizations. The participation in relevant projects of the European Commission within the framework of the Phare Programme and Transition Facility Programme was highlighted by Germany, while Spain pointed out the provision of technical assistance to foreign police authorities in the framework of bilateral and multilateral cooperation programmes, as well as through the European Union mechanisms. Other States (France and Portugal) made reference to cooperation with the Secretariat and the Organization for Security and Cooperation in Europe in carrying out technical assistance activities. Tunisia reported on cooperation through the United Nations system with other countries with a view to preventing and combating smuggling of migrants, especially through technical cooperation programmes, as well as on the endeavours to that effect in the framework of the African Union and the League of Arab States.

33. Canada reported that, with occasional support from the International Organization for Migration, its national authorities had worked with counterparts in Mexico and the United States to coordinate training sessions for officials from States participating in the Regional Conference on Migration (Puebla Process). It was further pointed out that the main objective of this initiative was to identify illegal migration patterns and trends and to improve knowledge on recognizing and detecting fraudulent travel and identity documents and therefore the training sessions incorporated overviews of trends as well as practical elements of examination of documents and interview techniques. Such activities were supported by Canada's international network of migration integrity officers. In this context, two recent occasions were reported in which Canada had cooperated with the United States, through the Asia-Pacific Economic Cooperation Business Mobility Group and the Inter-American Committee against Terrorism of the Organization of American States, to organize a border symposium in Vancouver, Canada, aimed at highlighting methods of international cooperation at land and sea entry points and airports and promoting the efficiency of border controls, with a special focus on screening and identification, as well as on identifying irregular migration and trends in smuggling of migrants. Canada also informed the Secretariat on its immigration intelligence network, which assigned migration integrity officers to diplomatic and

consular missions in other States to monitor irregular migration and trends in smuggling of migrants. It was clarified that their work included assistance and training to airline personnel, airport screening staff and local government officials in identifying fraudulent travel and identity documents and impostors.

34. In relation to the provision of technical assistance at the bilateral level, the Secretariat also received information on various activities regarding the provision of technical advice in reviewing immigration systems and drafting legislation on cooperation with origin, transit and destination countries in order to prevent and combat smuggling of migrants focusing, *inter alia*, on improving the security and quality of travel documents and exchanging information for the identification of criminals involved in the offence. New Zealand reported on its cooperation with Australia in drafting model provisions for inclusion in legislation against transnational organized crime for the Pacific island States. In this context, funding had been given to legal drafters to work with the Government agencies of those States for the development and adoption of relevant implementing laws.

### **III. Concluding remarks**

35. The existence of domestic legislation to tackle the smuggling of migrants in almost all Member States responding to the questionnaire on the basis of which the present report was drafted should not make one lose sight of the effort that is still required for streamlining the implementation of national provisions in order fully to meet the requirements established by the Migrants Protocol. The Conference may wish to consider practical ways and means of assisting States that lack the necessary capacity, especially developing countries and countries with economies in transition, to ensure full compliance with the provisions of the Protocol.

36. In this context, high priority should be accorded to the promotion of technical assistance programmes, activities and projects, including training programmes for investigators, prosecutors, judges and law enforcement officers. Training programmes geared towards enhancing capacity-building in the fight against the smuggling of migrants could be accompanied by such initiatives as the placement of short- and/or long-term mentors to provide assistance in this field or the dissemination of best practices to national authorities involved. In addition, the Secretariat should continue promoting activities aimed at improving domestic legislative capacities for the ratification and implementation of the Protocol by, *inter alia*, providing in-depth analysis of existing legislation and relevant institutions, helping drafters of legislation to update and/or adopt legislation and assisting Governments in the establishment and reinforcement of international cooperation mechanisms to combat the smuggling of migrants.

37. The effectiveness of the assistance to be provided by the Conference mostly relies on the availability and further utilization of adequate information on national programmes, plans and practices, as well as domestic legislative and administrative measures to implement the Migrants Protocol. In view of that, Member States that have not responded to the questionnaire are called upon to facilitate further the work of the Secretariat and provide the information required by the Conference. States parties to the Protocol, in particular, should take into account to that effect their relevant obligation stipulated in the Convention itself (art. 32, para. 5). The

efficiency of the reporting mechanism supporting the function of the Conference can only be ensured when the information available is representative and reflects as many national approaches as possible and not only a portion covering less than half of the States parties to the Protocol.

38. As this initial evaluation and review of the implementation of the Protocol provisions, in particular those on the relevant criminalization requirements, has been made at the early stages of the work that the Conference has undertaken in accordance with article 32 of the Convention, the information already submitted by Member States will further be systematized and assessed in conjunction with additional information to be received in subsequent stages pursuant to the programme of work of the Conference. It has already been identified that such material would focus on other aspects of national action aimed at addressing the challenges posed by the smuggling of migrants, including preventive measures, and policies to ensure better protection of smuggled migrants and full respect for their human rights.

## Annex I

### Relevant legislation and website addresses received from States

1. The Secretariat received information from a number of States in response to its request for a copy of relevant legislation and/or website addresses for relevant online information. The following States sent copies of relevant legislation:

<i>State</i>	<i>Legislation</i>	<i>Language</i>
Austria	Abstracts of relevant legislation	English
Belgium	Abstracts of relevant legislation	French
Bosnia and Herzegovina	Criminal code	English
Bulgaria	Abstracts of the criminal code and relevant legislation	English
Chile	Abstracts of relevant legislation	Spanish
Costa Rica	Abstracts of relevant legislation	Spanish
Czech Republic	Abstracts of the criminal code	English
Egypt	Abstracts of relevant legislation	Arabic
Lithuania	Abstracts of the criminal code	English
Malaysia	Abstracts of relevant legislation	English
New Zealand	Abstracts of relevant legislation	English
Nicaragua	Abstracts of the criminal code and relevant legislation	Spanish
Nigeria	Abstracts of relevant legislation	English
Serbia	Criminal code	English
Slovenia	Abstracts of the criminal code	English
South Africa	Abstracts of relevant legislation	English
United Kingdom of Great Britain and Northern Ireland	Abstracts of relevant legislation	English

2. The following States sent website addresses:

<i>State</i>	<i>Website address</i>
Algeria	<a href="http://www.joradp.dz">http://www.joradp.dz</a>
Australia	<a href="http://www.comlaw.gov.au">http://www.comlaw.gov.au</a>
Canada	<a href="http://laws.justice.gc.ca/en/I-2.5/index.html">http://laws.justice.gc.ca/en/I-2.5/index.html</a>
Estonia	<a href="http://www.legaltext.ee/indexen.htm">http://www.legaltext.ee/indexen.htm</a>
Montenegro	<a href="http://www.vlada.cg.yu">http://www.vlada.cg.yu</a>
Slovakia	<a href="http://www.minv.sk">http://www.minv.sk</a>
United Republic of Tanzania	<a href="http://www.parliament.go.tz">http://www.parliament.go.tz</a>

## Annex II

**Status of responses to the questionnaire on the implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime: first reporting cycle**

<i>State</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA), accession (a) or succession (d)</i>	<i>Year responses received</i>	<i>Year updates to responses received</i>
Algeria	6 June 2001	9 Mar. 2004	2006	-
Angola	-	-	2005	-
Argentina	12 Dec. 2000	19 Nov. 2002	2005	-
Australia	21 Dec. 2001	27 May 2004	2005	-
Austria	12 Dec. 2000	30 Nov. 2007	2005	2008
Azerbaijan	12 Dec. 2000	30 Oct. 2003	2005	-
Bahrain	-	7 June 2004 (a)	2005	-
Belarus	14 Dec. 2000	25 June 2003	2005	-
Belgium	12 Dec. 2000	11 Aug. 2004	2005	2008
Bosnia and Herzegovina	12 Dec. 2000	24 Apr. 2002	2008	-
Brazil	12 Dec. 2000	29 Jan. 2004	2005	-
Bulgaria	13 Dec. 2000	5 Dec. 2001	2006	2008
Burkina Faso	15 Dec. 2000	15 May 2002	2008	-
Cameroon	13 Dec. 2000	6 Feb. 2006	2008	-
Canada	14 Dec. 2000	13 May 2002	2005	-
Central African Republic	-	6 Oct. 2006 (a)	2008	-
Chad	-	-	2008	-
Chile	8 Aug. 2002	29 Nov. 2004	2006	-
Congo	14 Dec. 2000	-	2005	-
Costa Rica	16 Mar. 2001	7 Aug. 2003	2005	-
Croatia	12 Dec. 2000	24 Jan. 2003	2005	2008
Cyprus	12 Dec. 2000	6 Aug. 2003	2004	-
Czech Republic	10 Dec. 2002	-	2005	2008
Democratic Republic of the Congo	-	28 Oct. 2005 (a)	2008	-
Egypt	-	1 Mar. 2005 (a)	2005	-
El Salvador	15 Aug. 2002	18 Mar. 2004	2005	-
Estonia	20 Sept. 2002	12 May 2004	2005	2008
Finland	12 Dec. 2000	7 Sept. 2006 (A)	2005	-
France	12 Dec. 2000	29 Oct. 2002	2005	2008
Germany	12 Dec. 2000	14 June 2006	2005	2008
Greece	13 Dec. 2000	-	2007	-
Guatemala	-	1 Apr. 2004 (a)	2005	2008

<i>State</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA), accession (a) or succession (d)</i>	<i>Year responses received</i>	<i>Year updates to responses received</i>
Guinea	-	8 June 2005 (a)	2008	-
Honduras	-	-	2005	-
Iceland	13 Dec. 2000	-	2005	-
Ireland	13 Dec. 2000	-	2005	-
Italy	12 Dec. 2000	2 Aug. 2006	2005	-
Jamaica	13 Feb. 2002	29 Sept. 2003	2005	-
Kazakhstan	-	31 July 2008 (a)	2005	-
Kuwait	-	12 May 2006 (a)	2005	-
Latvia	10 Dec. 2002	23 Apr. 2003	2005	-
Lithuania	25 Apr. 2002	12 May 2003	2005	-
Madagascar	14 Dec. 2000	15 Sept. 2005	2008	-
Malaysia	-	-	2005	-
Maldives	-	-	2005	-
Malta	14 Dec. 2000	24 Sept. 2003	2005	-
Mexico	13 Dec. 2000	4 Mar. 2003	2004	-
Moldova	14 Dec. 2000	16 Sept. 2005	2005	-
Montenegro	-	23 Oct. 2006 (d)	2008	-
Myanmar	-	30 Mar. 2004 (a)	2005	-
Namibia	13 Dec. 2000	16 Aug. 2002	2005	-
Netherlands	12 Dec. 2000	27 July 2005 (A)	2005	-
New Zealand	14 Dec. 2000	19 July 2002	2005	-
Nicaragua	-	15 Feb. 2006 (a)	2005	-
Nigeria	13 Dec. 2000	27 Sept. 2001	2006	-
Norway	13 Dec. 2000	23 Sept. 2003	2007	-
Panama	13 Dec. 2000	18 Aug. 2004	2005	-
Peru	14 Dec. 2000	23 Jan. 2002	2005	-
Philippines	14 Dec. 2000	28 May 2002	2005	-
Poland	4 Oct. 2001	26 Sept. 2003	2005	2008
Portugal	12 Dec. 2000	10 May 2004	2005	-
Romania	14 Dec. 2000	4 Dec. 2002	2005	-
Russian Federation	12 Dec. 2000	26 May 2004	2005	-
Serbia	12 Dec. 2000	6 Sept. 2001	2005	2008
Slovakia	15 Nov. 2001	21 Sept. 2004	2004	-
Slovenia	15 Nov. 2001	21 May 2004	2005	-
South Africa	14 Dec. 2000	20 Feb. 2004	2005	-
Spain	13 Dec. 2000	1 Mar. 2002	2005	2008
Sweden	12 Dec. 2000	6 Sept. 2006	2005	2008
Switzerland	2 Apr. 2002	27 Oct. 2006	2005	2008
Syrian Arab Republic	13 Dec. 2000	-	2005	-
Tajikistan	-	8 July 2002 (a)	2006	-
Thailand	18 Dec. 2001	-	2006	-
The former Yugoslav Republic of Macedonia	12 Dec. 2000	12 Jan. 2005	2006	-



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<i>State</i>	<i>Date of signature</i>	<i>Date of ratification, acceptance (A), approval (AA), accession (a) or succession (d)</i>	<i>Year responses received</i>	<i>Year updates to responses received</i>
Togo	12 Dec. 2000	-	2008	-
Tunisia	13 Dec. 2000	14 July 2003	2004	-
Turkey	13 Dec. 2000	25 Mar. 2003	2005	-
United Kingdom of Great Britain and Northern Ireland	14 Dec. 2000	9 Feb. 2006	2005	-
United Republic of Tanzania	13 Dec. 2000	24 May 2006	2005	-
United States of America	13 Dec. 2000	3 Nov. 2005	2005	2008

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