



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

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Report on the meeting of the Working Group on the Smuggling of Migrants held in Vienna from 18 to 20 November 2015

I. Introduction

1. Pursuant to resolution 5/3, adopted by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime at its fifth session, an open-ended intergovernmental interim working group on the smuggling of migrants was established to advise and assist the Conference in the implementation of its mandate with regard to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. The first meeting of the Working Group was held from 30 May to 1 June 2012, and the second from 11 to 13 November 2013.

2. In its resolution 6/3, entitled “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 decided, *inter alia*, that the Working Group should continue to perform its functions.

3. In its resolution 7/1, entitled “Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”, the Conference decided, *inter alia*, that the Working Group would be a constant element of the Conference of the Parties, forwarding its reports and recommendations to the Conference, and encouraged the working groups of the Conference to consider meeting on an annual basis, as needed, and to hold its meetings consecutively, in order to ensure the effective use of resources.

II. Recommendations

4. The Working Group adopted the recommendations provided below. The recommendations should not be construed or executed in a way that prejudices the freedom of navigation or any established practices carried out in accordance with international law on the high seas.



A. Smuggling of migrants by sea

5. States should consider establishing jurisdiction, consistent with applicable international law, over incidents of migrant smuggling on the high seas involving unflagged vessels, including incidents in which the transportation of the migrants to shore by rescuers is the result of the deliberate conduct of the smugglers aimed at provoking the rescue of the migrants, and States may wish to consider the full implementation of article 15 of the Convention.

6. States must treat the smuggling of migrants as a criminal offence and not only as an immigration matter, and include it among predicate offences for money-laundering.

7. States should consider the adoption of multilateral, regional and bilateral agreements and arrangements to implement article 8 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime to set reasonable time frames for responding to requests under its provisions.

8. Consistent with applicable international law, States should not hold seafarers who have assisted, rescued or disembarked smuggled migrants in distress at sea criminally liable.

9. States should, where appropriate, ensure that the immediate and essential needs of persons having been the object of smuggling are catered for, including their medical needs and, if possible, their needs for psychological care, should facilitate timely communication with the families and consular offices of such persons, and should provide guarantees for their safety, in cooperation with relevant stakeholders, including civil society actors.

10. States are encouraged to adopt procedures and guidelines, in accordance with their own domestic legal frameworks, on the timely and effective debriefing and interviewing of smuggled migrants for investigative purposes, including of children and potential victims of trafficking in persons, that take into account their human rights and vulnerability.

11. States should encourage smuggled migrants to cooperate with investigations, including by providing witness testimony, and, consistent with article 24 of the Convention, should consider measures to effectively protect those who do so and, as appropriate, their relatives and loved ones, from potential retaliation, including, where appropriate, by considering granting them temporary residence permits or relocation assistance.

12. States should enhance the use of the Organized Crime Convention and the Smuggling of Migrants Protocol as the basis for international cooperation aimed at facilitating extradition and the widest possible measure of mutual legal assistance in smuggling of migrants cases, in accordance with articles 16 and 18 of the Convention.

13. In implementing the Smuggling of Migrants Protocol, States parties should take full advantage of the tools provided for in the Convention, including, but not limited to, confiscation and seizure, mutual legal assistance, extradition, witness protection, and the use of special investigative techniques.

14. States are encouraged, as appropriate, to share information on best practices and procedures followed, and checklists used, when responding to incidents involving the smuggling of migrants by sea, as well as information on their detection, to allow intelligence-based investigations and to use indicators to detect the smuggling of migrants on land.

15. States should consider establishing a national mechanism or body to coordinate a whole-of-government, multi-stakeholder response by, inter alia, law enforcement, criminal justice, border protection, immigration, and foreign ministries, in cooperation with relevant civil society actors, in order to identify, disrupt and prevent migrant smuggling ventures in accordance with the Smuggling of Migrants Protocol.

16. States should tackle the root causes of the smuggling of migrants, based on their shared commitments, in order to prevent and combat that crime, and to address the hardships that migrants who have been the object of smuggling face, including by strengthening cooperation between countries of origin, transit and destination, and should strengthen the role of regional mechanisms and relevant international organizations in that regard.

17. The Secretariat should, within its mandate, continue to provide technical assistance to States requesting to become parties to the Smuggling of Migrants Protocol, to draft manuals and guidelines that may contribute to the full implementation of the Protocol, and to strengthen States' crime prevention and criminal justice responses to the smuggling of migrants and related crimes.

18. In accordance with applicable international obligations, including article 19 of the Smuggling of Migrants Protocol, States should ensure full respect for the rights of smuggled migrants, should fully adhere to the principle of non-discrimination when offering assistance and protection, and should duly take into consideration the principle of non-refoulement, including during interception at sea.

B. Practical measures to prevent the smuggling of migrants and children, in particular unaccompanied children, such as the issuance of visas on arrival, public information campaigns and training sessions on fraudulent documents

19. States should endeavour to fully implement the 2030 Agenda for Sustainable Development, including in order to help to prevent the smuggling of migrants.

20. States should exert further efforts in the field of development cooperation, in a manner that focuses on reducing poverty and fostering socioeconomic development, by supporting inclusive economic growth through investment opportunities and the creation of decent jobs, and by improving the delivery of basic services such as education and health, as a way to prevent the smuggling of migrants.

21. States should establish or enhance appropriate channels for regular and orderly migration, and issue visas in the countries from which migrants originate and through which they transit, as a way to reduce the danger posed by smuggling organizations.

22. States are encouraged to develop and implement comprehensive national policies on migration to prevent the smuggling of migrants, including, where relevant, considering the creation of multisectoral public institutions, in cooperation with civil society and migrants, and build capacity in order to fully implement those policies.
23. States should recognize that children and adolescents who are the object of smuggling, especially those who are unaccompanied, are particularly vulnerable. States should take measures to protect them and safeguard their rights, with due regard for the principle of the best interest of the child.
24. States should raise awareness of the risks involved in the criminal activities carried out by migrant smugglers, informing migrants about their rights and the applicable procedures, and develop mechanisms for the identification and protection of unaccompanied migrant children, in cooperation with international organizations and relevant civil society actors.
25. States should provide protection to unaccompanied children under the supervision of the relevant administrative authorities or juvenile courts, including through the appointment of guardians, who may be volunteers.
26. States of origin, transit and destination should cooperate, to the extent possible, in order to trace and identify the families of unaccompanied migrant children.
27. States should endeavour to provide specialized care to unaccompanied children and adolescents who are in the process of being repatriated such as by transferring them to an appropriate and safe place; informing them of their rights and of the prime objective of safeguarding their physical and psychological integrity; having them interviewed by qualified authorities, taking into consideration their gender and age; and providing, if needed, basic emergency medical and psychological services.
28. States should consider including among their national migration practitioners personnel specifically trained in the rights of children and women at risk of becoming the object of smuggling.
29. States of origin should consider, as a preventive measure, the implementation of exit authorization for separated or unaccompanied children in accordance with their domestic laws and regulations.
30. States are encouraged to combat travel document and passport fraud, which facilitates the smuggling of migrants, by utilizing counterfeit link analysis to compare and classify seized counterfeit documents in order to identify the source of fraudulent documents.
31. To detect fraudulent travel documents and combat travel document fraud, States are encouraged to utilize innovative tools and automated systems, including databases such as the stolen and lost travel document database of the International Criminal Police Organization (INTERPOL), the Digital INTERPOL Alert Library-Document system, known as Dial-Doc, and the work of the International Civil Aviation Organization relating to travel document security, allow countries to share global alerts on newly detected forms of document counterfeiting.

32. States should seek to establish, where appropriate, bilateral cooperation arrangements with known source, transit and destination countries, and to establish relationships, including through liaison officers, with relevant law enforcement and criminal justice practitioners, commercial carriers, and private industry, in order to effectively counter the smuggling of migrants.

33. States are encouraged to consider cooperating with relevant civil society organizations and to utilize communication campaigns to increase public awareness of the fact that the smuggling of migrants is a criminal activity frequently perpetrated by organized criminal groups for profit, and that it poses serious risks to the safety, security and health of migrants.

34. States are encouraged to be aware of how their national laws and policies may create incentives for irregular migration, particularly for unaccompanied migrant children, or may be used as a tool by smugglers to attract potential migrants.

C. Organized crime aspects of the smuggling of migrants, including financial investigations and responses targeting the proceeds of crime

35. States should recognize the consequences of the conduct of transnational criminal organizations involved in the smuggling of migrants, including in cases where public officials are corrupted.

36. States should consider that the activities of transnational criminal organizations involved in the smuggling of migrants could, in some cases, directly or indirectly provide financial support to other types of organized criminal groups and terrorist organizations.

37. States should deepen their understanding of the modus operandi of the transnational organized criminal groups involved in the smuggling of migrants and the consequences of their activities, in order to strengthen the crime prevention and criminal justice responses at the national, regional and international levels.

38. States should strengthen their capacity to launch and conduct proactive financial investigations to seize and recover criminal assets in smuggling of migrants cases. Their efforts should include ensuring better and more systematic links between financial intelligence units, law enforcement agencies and the judiciary, in order to counter the financing of organized criminal groups. To this aim, States should also step up their cooperation with financial institutions such as banks, credit transfer service providers and credit cards issuers.

39. The Conference should encourage effective engagement of States in all appropriate bilateral, regional and global forums, while avoiding unnecessary duplication of efforts, in order to foster the gathering and exchange of knowledge and best practices on financial investigations and responses targeting the criminal proceeds of the smuggling of migrants.

40. States should promote international legal and police cooperation, especially in the investigation of high-profile criminal networks involved in the smuggling of migrants and in mistreating and committing violence against smuggled migrants.

41. States should consider requesting the Secretariat to collect information and prepare a comprehensive global report on the smuggling of migrants, in close coordination and consultation with States.

42. The Conference should consider all options to ensure that reliable and consistent information is provided about the effective implementation of the Organized Crime Convention and of the Smuggling of Migrants Protocol, with a view to identifying gaps and needs for technical assistance and highlighting successful experiences and good practices.

43. States are encouraged to conduct studies and field research to determine the features and characteristics of migrant smugglers. The findings of such studies may be helpful in drafting practical recommendations that address the smuggling of migrants, especially children.

44. States should promote the use of the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC) to facilitate the exchange of information on the implementation of the Smuggling of Migrants Protocol.

45. States should continue supporting the United Nations Office on Drugs and Crime in accomplishing its mandate with regard to the implementation of the Smuggling of Migrants Protocol.

III. Organization of the meeting

A. Opening of the meeting

46. The third meeting of the Working Group on the Smuggling of Migrants was held in Vienna from 18 to 20 November 2015. Five separate meetings were held during the meeting.

47. The meeting was chaired by Ignacio Baylina Ruíz (Spain).

48. At the opening of the meeting, a statement was made by the representative of the Group of Latin American and Caribbean States.

B. Statements

49. A general introductory statement was made by the Secretariat under agenda item 2.

50. With the Chair presiding, the discussion under agenda items 2 and 3 was led by the following panellists: Simona Ragazzi (Italy), Louis J. Orsini (United States of America) and Liduvina del Carmen Magarín de Esperanza (El Salvador).

51. Under agenda items 2 to 6, statements were made by representatives of the following parties to the Smuggling of Migrants Protocol: Algeria, Argentina, Australia, Brazil, Canada, Costa Rica, Cuba, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, France, Greece, Guatemala, Hungary, Indonesia, Iraq, Italy, Kenya, Mexico, Netherlands, Norway, Oman, Peru, Philippines, Republic of

Korea, Romania, Russian Federation, Saudi Arabia, Slovenia, South Africa, Spain, Tunisia, Turkey, United States and Uruguay, as well as European Union.

52. The observer for the signatory State Japan also made a statement.

53. The following States that are not parties or signatories to the Smuggling of Migrants Protocol made a statement: Afghanistan, China, Colombia and Israel.

54. The Working Group also heard statements by the observer for the International Organization for Migration.

C. Adoption of the agenda and organization of work

55. At the first meeting, on 18 November 2015, the Working Group adopted by consensus its provisional agenda and organization of work:

1. Organizational matters:
 - (a) Opening of the meeting;
 - (b) Adoption of the agenda and organization of work.
2. Smuggling of migrants by sea.
3. Practical measures to prevent the smuggling of migrants and children, in particular unaccompanied children, such as the issuance of visas on arrival, public information campaigns and training sessions on fraudulent documents.
4. Organized crime aspects of the smuggling of migrants, including financial investigations and responses targeting the proceeds of crime.
5. Other matters.
6. Adoption of the report.

D. Attendance

56. The following States parties to the Smuggling of Migrants Protocol were represented in the Working Group: Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Belgium, Benin, Botswana, Brazil, Bulgaria, Canada, Chile, Costa Rica, Croatia, Cuba, Cyprus, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, France, Germany, Ghana, Greece, Guatemala, Hungary, India, Indonesia, Iraq, Italy, Kenya, Kuwait, Lebanon, Libya, Luxembourg, Malta, Mexico, Morocco, Netherlands, New Zealand, Norway, Oman, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, San Marino, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States, Uruguay and Venezuela (Bolivarian Republic of).

57. The European Union, a regional economic integration organization that is a party to the Smuggling of Migrants Protocol, was represented at the meeting.

58. The following States signatories to the Smuggling of Migrants Protocol were represented by observers: Bolivia (Plurinational State of), Japan and Thailand.

59. The following States that are not parties or signatories to the Smuggling of Migrants Protocol were represented by observers: Afghanistan, China, Colombia, Côte d'Ivoire, Iran (Islamic Republic of), Israel, Jordan, Malaysia, Pakistan, Qatar, State of Palestine, Sudan and United Arab Emirates.

60. The Office of the United Nations High Commissioner for Refugees was represented by an observer.

61. The following intergovernmental organizations were represented by observers: Central European Initiative, Council of Arab Ministers of the Interior, Council of Europe, Economic Community of Central Africa States, International Centre for Migration Policy Development, International Organization for Migration.

62. A list of participants is contained in document CTOC/COP/WG.7/2015/INF/1/Rev.1.

E. Documentation

63. The Working Group had before it the following documents:

(a) Provisional agenda and annotations (CTOC/COP/WG.4/2015/1);

(b) Note by the Secretariat on the smuggling of migrants by sea (CTOC/COP/WG.7/2015/2 and Add.1);

(c) Note by the Secretariat on practical measures to prevent the smuggling of migrants and children, in particular unaccompanied children, such as the issuance of visas on arrival, public information campaigns, and training sessions on fraudulent documents (CTOC/COP/WG.7/2015/3 and Add.1);

(d) Note by the Secretariat on the organized crime aspects of the smuggling of migrants, including financial investigations and responses targeting the proceeds of crime (CTOC/COP/WG.7/2015/4);

(e) Note by the Secretariat on the consolidated recommendations of the Working Group on Trafficking in Persons (CTOC/COP/WG.4/2015/5);

(f) Report on the transregional training workshop on preventing and combating the smuggling of migrants by sea in the Mediterranean region (CTOC/COP/WG.7/2015/CRP.1);

(g) Report on the transregional training workshop on preventing and combating the smuggling of migrants by sea in Mexico, Central America and the Caribbean (CTOC/COP/WG.7/2015/CRP.2);

(h) Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the European Union action plan against the smuggling of migrants (2015-2020) (CTOC/COP/WG.7/2015/CRP.3).

IV. Adoption of the report

64. Some States parties raised the issue of the participation of civil society in the Working Group, while others reiterated their objections to that discussion and its inclusion in the report.

65. On 20 November 2015, the Working Group adopted the report on its meeting (CTOC/COP/WG.7/2015/L.1 and Add.1, as orally amended).
