



# 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 on 14 and 15 October 2021

### 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.
2. 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 on the Smuggling of Migrants would be a constant element of the Conference, 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 their meetings consecutively, in order to ensure the effective use of resources.
3. The Working Group on the Smuggling of Migrants met for the first time from 30 May to 1 June 2012 and held a total of seven meetings prior to the current meeting.

### II. Recommendations

4. At its eighth meeting, held in Vienna on 14 and 15 October 2021, the Working Group on the Smuggling of Migrants adopted the recommendations presented below.

#### A. Recommendations on the impact that the availability of regular channels of migration has on reducing demand for the smuggling of migrants

##### *Recommendation 1*

States parties are encouraged to enhance data collection, research and the exchange of information on the correlation between the use of migrant smuggling services and the unavailability of pathways for regular migration in order to develop stronger evidence-based anti-smuggling policies, in accordance with their domestic law.



*Recommendation 2*

States parties are encouraged, in line with the fundamental principles of their domestic law and relevant and applicable international obligations, to take a human rights-based approach to migration policies through the mainstreaming of human rights-based, gender- and child-sensitive approaches, as a priority, in the development of pathways for regular migration, to place the protection and rights of migrants and those whose lives or safety is in danger in their migration at the core of anti-smuggling policies and practices, and to step up efforts to prevent the politicization of the migration discourse.

*Recommendation 3*

States parties are encouraged to enhance legal, policy and/or administrative mechanisms providing for regular travel, admission or stay in the territory of a State, and, taking into account national capabilities, ensure that regular migration processes are affordable, accessible, understandable and timely, in conformity with procedural safeguards and with the meaningful participation of all relevant stakeholders.

*Recommendation 4*

States parties should consider that unnecessarily restrictive migration policies could lead to fuelling the business of migrant smuggling, including by prompting smugglers to charge higher fees and to expose migrants to increased risks of aggravated forms of smuggling.

*Recommendation 5*

States parties should enhance coordination, collaboration and communication among all relevant national authorities, such as criminal justice, labour, border management and migrant protection authorities, to design effective pathways for regular migration.

**B. Recommendations on how to strengthen the capacity to prosecute cases of smuggling of migrants***Recommendation 6*

States parties are encouraged to investigate and prosecute, in a timely manner, members of organized criminal groups, with a focus on high-ranking criminals, engaged in migrant smuggling, including through the use of proactive investigations and in cooperation with relevant regional, subregional and international organizations, and to protect witnesses, their relatives and other persons close to them, in accordance with the United Nations Convention against Transnational Organized Crime and their domestic legal frameworks.

*Recommendation 7*

States parties are encouraged to review their legislation, when necessary, to ensure that it fully complies with the definition of migrant smuggling, as provided by the Smuggling of Migrants Protocol, in particular by establishing criminal liability pursuant to the Protocol in the presence of a clear purpose of a financial or other material benefit, while giving appropriate consideration to humanitarian and compassionate reasons or factors.

*Recommendation 8*

States parties are encouraged to strengthen their measures to counter corruption as a possible enabler of the smuggling of migrants and as an obstacle to its effective prosecution, and to collect data on the scale of this phenomenon.

*Recommendation 9*

States parties are encouraged to effectively investigate and prosecute abuses committed against smuggled migrants, including in transit and destination countries, through the prosecution of offences related to aggravated forms of smuggling, where appropriate, and through the imposition of appropriate penalties.

*Recommendation 10*

States parties should ensure the effective investigation and prosecution of smuggling of migrants cases through the use of all available special investigative techniques and financial investigations, as provided for in their domestic legal frameworks, and through all forms of international cooperation, such as joint or parallel investigative teams, the deployment of liaison magistrates and the establishment of networks of prosecutors, inter alia by concluding bilateral or multilateral agreements or arrangements in line with article 18 of the United Nations Convention against Transnational Organized Crime.

*Recommendation 11*

States parties and their national authorities are encouraged, in appropriate cases, to make use of the channels of communication, networks of experts and services of the International Criminal Police Organization (INTERPOL) to foster international police cooperation at the regional and global levels in order to better respond to the smuggling of migrants.

*Recommendation 12*

States parties should seek to collaborate with Internet service providers and other relevant partners in the collection of evidence on the smuggling of migrants and in the prevention of the misuse by criminal networks of online platforms for the purpose of smuggling migrants.

### **III. Summary of deliberations**

5. The following summary of deliberations was prepared by the secretariat after the meeting, in close coordination with the Chair. It was not subject to negotiation and adoption during the meeting and is, instead, a summary by the Chair.

#### **A. Analysis of the impact that the availability of regular channels of migration has on reducing demand for the smuggling of migrants**

6. At its 1st meeting, on 14 October 2021, the Working Group considered agenda item 2, entitled “Analysis of the impact that the availability of regular channels of migration has on reducing demand for the smuggling of migrants”.

7. The discussion under agenda item 2 was facilitated by Guillermina Benito, Head of Early Detection of Human Trafficking and Smuggling of Persons at the National Directorate of Migration of Argentina, on behalf of the Group of Latin American and Caribbean States.

8. Ms. Benito briefed the Working Group on the migrant smuggling activities affecting Argentina and highlighted that the coronavirus disease (COVID-19) pandemic had tested the resources and capacity of the Government to deal with the phenomenon, while, at the same time, smuggling networks had adjusted their modus operandi by offering services along more dangerous routes, increasing their smuggling fees and putting migrants at heightened risk. She noted that recent irregular migration flows towards the country had exhibited an increased representation of women and girls and LGBTQI+ groups, owing to discrimination and other gender-related issues experienced in the region. She provided an overview of her

country's efforts to counter the smuggling of migrants, including by strengthening pathways for regular migration, and emphasized measures in place to protect the rights of smuggled migrants, including during the COVID-19 pandemic. Examples cited included granting smuggled migrants access to health care, family reunification and access to residency. Finally, she stressed the necessity of ensuring consistent gender-sensitive and human rights-based approaches in the design of all regional policies, actions and projects and the need to empower migrants as positive agents of development.

9. Following the panellist's presentation, several questions were raised to request further information on, among other things, the effects of the establishment of regular pathways on the smuggling of migrants, access to health care afforded to smuggled migrants during the pandemic, cooperation in countering the crime at the cross-regional level and measures to address recidivism in the context of the smuggling of migrants.

10. In the discussion that followed, several speakers agreed that the prosecution of migrant smuggling offences alone was not sufficient to counter the phenomenon and needed to be complemented with the provision of regular channels of migration, so as to effectively reduce the demand for smuggling services. One speaker confirmed that data and information gathered during the COVID-19 pandemic had shown that the related restrictions and border closures did not decrease the smuggling of migrants in the Mediterranean region; rather, migrants either continued to resort to the same smuggling services or undertook even riskier journeys to reach their destinations. Many speakers noted the need for more data, research and analysis on the impact of the availability of regular migration pathways in reducing the crime of smuggling migrants.

11. Many speakers also presented national efforts and best practices in strengthening legal channels for migration and protecting the rights of migrants, as well as in countering the smuggling of migrants in general. A speaker noted, for example, the establishment of a special humanitarian programme, aiming on one hand to minimize irregular movements of migrants and refugees and, on the other, to ensure migrant resettlement and integration in the destination country, including by offering employment opportunities. Another speaker highlighted that providing means to regularize the status of migrants who were not entitled to international protection also prevented the mischaracterization of asylum cases, thus also avoiding putting additional pressure on asylum systems.

12. Several speakers further underscored the importance of international instruments, such as the Global Compact for Safe, Orderly and Regular Migration and the global compact on refugees, as tools to improve the response to the smuggling of migrants. Others highlighted that criminal justice responses to the crime should be complemented by efforts towards addressing the root causes that drive irregular migration, including discrimination, poverty, social unrest and conflict. Some speakers further stressed the importance of increased cross-border cooperation, including on the protection of the rights of smuggled migrants and the provision of gender- and age-sensitive assistance. A speaker stressed the importance of refraining from the politicization of the migration discourse.

## **B. How to strengthen the capacity to prosecute cases of smuggling of migrants**

13. At its 2nd and 3rd meetings, on 14 and 15 October 2021, the Working Group considered agenda item 3, entitled "How to strengthen the capacity to prosecute cases of smuggling of migrants".

14. The discussion under agenda item 3 was facilitated by the following panellists: Danielle Hickman, Trial Attorney at the United States Department of Justice, on behalf of the Group of Western European and other States, and Joziel Brito De Barros, Federal Police Commissioner and Head of the Service to Suppress Trafficking in

Persons and Smuggling of Migrants, Federal Police, Ministry of Justice and Public Security of Brazil, on behalf of the Group of Latin American and Caribbean States.

15. Ms. Hickman provided information about national practices in investigating and prosecuting cases of smuggling of migrants in the United States of America. She highlighted how the existence of a specialized unit of prosecutors within the United States Department of Justice, with specific knowledge on transnational criminal cases, had greatly supported the prosecution and conviction of smugglers. She also noted that the unit worked with investigators who had existing relationships with law enforcement agencies in other countries, allowing the best utilization of international cooperation to identify, disrupt and dismantle migrant smuggling organizations. She presented the work of the recently established Joint Task Force Alpha, a cross-departmental group of prosecutors, investigators, analysts and other support personnel that coordinated intelligence collection, worked closely with foreign partners to identify and target smuggling and trafficking networks, and coordinated transnational law enforcement efforts. She further presented three case examples of the successful prosecution of smuggling cases to underscore the importance of international and regional cooperation, both formal and informal, and the need for appropriate sentencing of criminals involved in the crime.

16. Mr. Brito De Barros presented the efforts of the police in Brazil to counter the smuggling of migrants, emphasizing how inter-agency cooperation with other departments, as well as international cooperation, could greatly support the investigation and prosecution of smuggling cases. He noted the success of Operation Turquesa, an INTERPOL-supported joint operation across several countries in the Americas, in identifying and dismantling criminal networks involved in the smuggling of migrants and trafficking in persons in the region. Furthermore, he underlined the current and emerging challenges hampering the effective eradication of the crime, including its increasingly lucrative nature, the ever-changing smuggling routes and the increasing use of new technologies by smugglers to conduct their illicit activities. In that regard, he recommended making use of joint investigation teams, as well as undertaking proactive investigations, as effective means to address the realities of that highly complex transnational crime.

17. Following the presentations, a number of questions were raised with the panellists on challenges encountered and best practices recommended, including on targeting high-profile criminals in smuggling networks, and on how to best deal with children who are smuggled and may suffer trauma.

18. In the discussion that followed, speakers shared national experiences in countering the smuggling of migrants. Some speakers highlighted the utility of targeting the financial core of the crime in disrupting the activities of smuggling networks and identifying the high-profile criminals behind detected activity. Several speakers underscored the usefulness of special investigative techniques, such as wiretapping and interceptions, in the investigation of smuggling cases, and noted the need for legislation to ensure the admissibility in court of digital and electronic evidence as crucial to proving the offence. Many speakers referred to specific examples of regional, cross-regional and international cooperation, including through mutual legal assistance, parallel and joint investigations and informal cooperation for information-sharing, as effective tools to improve the investigation and prosecution of transnational smuggling cases. Several speakers noted the deployment of liaison magistrates from countries of origin in countries of destination, and the establishment of prosecutors' networks, as being effective in facilitating judicial cooperation and effective prosecution of the smuggling of migrants. Some speakers also underlined the positive contribution of international, regional and subregional organizations, including the United Nations Office on Drugs and Crime (UNODC) and the International Criminal Police Organization (INTERPOL), in providing technical and operational support to countries to counter the smuggling of migrants.

19. In addition, some speakers highlighted the importance of tackling corruption among law enforcement and border officials as an enabler of the smuggling of

migrants, noting that while many anecdotal accounts were in circulation, the impact of the phenomenon on the smuggling of migrants was largely under-researched and required more systematic data collection. Finally, a speaker noted that the non-criminalization of smuggled migrants should be at the heart of States' understanding of the topic.

### **C. Other matters**

20. At its 3rd meeting, on 15 October 2021, the Working Group considered agenda item 4, entitled "Other matters".

21. Under agenda item 4, the Chair reminded delegates of the importance of the timely appointment of focal points for the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, noting that only 32 focal points had so far been nominated, with the reviews of only 19 countries progressing at the time. In the deliberations that followed, a speaker highlighted the paramount importance of that process and appealed to States that had not yet done so to ratify the Convention and the Protocols thereto and to engage with the Implementation Review Mechanism.

22. With regard to online participation in the meeting of the Working Group, some speakers noted that time differences had made it difficult to review the recommendations of the Working Group under the current working arrangements, and recommended that the working arrangements for future meetings be reconsidered to allow for more extensive consultations between participants in the meeting and relevant experts in their respective home countries.

## **IV. Organization of the meeting**

### **A. Opening of the meeting**

23. The Working Group on the Smuggling of Migrants met in Vienna on 14 and 15 October 2021, holding a total of four meetings.

24. The meeting was opened by Francesco Testa (Italy), Chair of the Working Group. He addressed the meeting and presented an overview of the mandate of the Working Group, its objectives and the subjects under its consideration.

### **B. Statements**

25. Under agenda item 2, with the Chair presiding, the discussion was led by the panellist, Guillermina Benito (Argentina).

26. Under agenda item 3, with the Chair presiding, the discussion was led by the following panellists: Joziel Brito De Barros (Brazil) and Danielle Hickman (United States).

27. Under agenda items 2 and 3, statements were made by representatives of the following parties to the Smuggling of Migrants Protocol: Algeria, Australia, Azerbaijan, Brazil, Canada, Chile, Ecuador, Egypt, European Union, France, Gambia, Guatemala, Honduras, Indonesia, Italy, Mexico, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States and Venezuela (Bolivarian Republic of).

28. Statements were also made by the observer for Pakistan, a signatory to the Smuggling of Migrants Protocol, and by the observers for the following non-signatory States: China, Holy See and Iran (Islamic Republic of).

29. In addition, the observers for the International Criminal Police Organization (INTERPOL) and the Parliamentary Assembly of the Mediterranean made statements.

## C. Adoption of the agenda and organization of work

30. At its 1st meeting, on 14 October 2021, the Working Group adopted by consensus the following agenda:

1. Organizational matters:
  - (a) Opening of the meeting;
  - (b) Adoption of the agenda and organization of work.
2. Analysis of the impact that the availability of regular channels of migration has on reducing demand for the smuggling of migrants.
3. How to strengthen the capacity to prosecute cases of smuggling of migrants.
4. Other matters.
5. Adoption of the report.

31. As agreed by the extended Bureau of the Conference, the meeting was held in a hybrid format (in person and online), with a restricted number of participants present in the meeting room and all other participants connected remotely using an interpretation platform used under contract by the United Nations.

32. In order to make the best use of the time available, no general statements were made during the meeting. Delegations had the option of submitting general statements in writing. The texts of those statements are available on the website of the meeting.<sup>1</sup> Delegations were also given the opportunity to publish on the website the statements that they made on the agenda items during the meeting.

## D. Attendance

33. The following parties to the Smuggling of Migrants Protocol were represented at the meeting, including those connected remotely owing to the specific format of the meeting in the light of the COVID-19 pandemic: Albania, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Canada, Chile, Costa Rica, Cuba, Cyprus, Czechia, Dominican Republic, Ecuador, Egypt, El Salvador, European Union, Finland, France, Gambia, Germany, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iraq, Italy, Japan, Kenya, Kuwait, Latvia, Lebanon, Libya, Lithuania, Madagascar, Mali, Malta, Mauritius, Mexico, Mongolia, Myanmar, New Zealand, Nigeria, Norway, Oman, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, San Marino, Saudi Arabia, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom, United States, Uruguay and Venezuela (Bolivarian Republic of).

34. The following States signatories to the Smuggling of Migrants Protocol were represented by observers, including those connected remotely owing to the specific format of the meeting in the light of the COVID-19 pandemic: Bolivia (Plurinational State of), Pakistan, Sri Lanka and Thailand.

35. The following States that are not parties or signatories to the Smuggling of Migrants Protocol were represented by observers, including those connected remotely owing to the specific format of the meeting in the light of the COVID-19 pandemic: Bangladesh, China, Colombia, Iran (Islamic Republic of), Israel, Jordan, Malaysia, Maldives, Morocco, Qatar, Singapore, United Arab Emirates and Yemen.

<sup>1</sup> [www.unodc.org/unodc/en/treaties/CTOC/working-group-on-the-smuggling-of-migrants-2021.html](http://www.unodc.org/unodc/en/treaties/CTOC/working-group-on-the-smuggling-of-migrants-2021.html).

36. The Holy See, a non-member State maintaining a permanent observer mission, was represented by observers.

37. The Sovereign Order of Malta, an entity maintaining a permanent observer office, was represented by observers.

38. The following intergovernmental organizations and mechanisms and United Nations entities were represented by observers, including those connected remotely owing to the specific format of the meeting in the light of the COVID-19 pandemic: Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime (Regional Support Office), Commonwealth of Independent States, Cooperation Council for the Arab States of the Gulf, European Institute for Crime Prevention and Control, affiliated with the United Nations, European Union Agency for Criminal Justice Cooperation, International Criminal Police Organization (INTERPOL), International Organization for Migration, League of Arab States, Office of the Special Adviser to the Secretary-General on the Prevention of Genocide, Office of the Special Representative of the Secretary-General on Violence against Children, Office of the United Nations High Commissioner for Refugees, Organization for Security and Cooperation in Europe, Parliamentary Assembly of the Mediterranean, South-East European Law Enforcement Centre and World Health Organization.

39. A list of participants is contained in document [CTOC/COP/WG.7/2021/INF/1/Rev.1](#).

## **E. Documentation**

40. The Working Group had before it the following:

(a) Annotated provisional agenda ([CTOC/COP/WG.7/2021/1](#));

(b) Background paper prepared by the Secretariat on the analysis of the impact that the availability of regular channels of migration has on reducing demand for the smuggling of migrants ([CTOC/COP/WG.7/2021/2](#));

(c) Background paper prepared by the Secretariat on how to strengthen the capacity to prosecute cases of smuggling of migrants ([CTOC/COP/WG.7/2021/3](#));

(d) Thematic compendium prepared by the Secretariat containing a compilation of background papers of the Working Group on the Smuggling of Migrants since its first meeting ([CTOC/COP/WG.7/2021/4](#)).

## **V. Adoption of the report**

41. At its 4th meeting, on 15 October 2021, the Working Group adopted sections I, II, IV and V of the present report.

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