



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

Distr.: General
11 July 2023

Original: English

Working Group on the Smuggling of Migrants

Vienna, 5 and 6 October 2023

Annotated provisional agenda

Provisional agenda

1. Organizational matters:
 - (a) Opening of the meeting;
 - (b) Adoption of the agenda and organization of work.
2. Determining who to charge with the crime of migrant smuggling: who is and who is not a migrant smuggler.
3. Developments, challenges and best practices in preventing and combating the smuggling of migrants by sea.
4. Matters pertaining to the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto.
5. Other matters.
6. Adoption of the report.

Annotations

1. Organizational matters

(a) Opening of the meeting

The tenth meeting of the Working Group on the Smuggling of Migrants will be opened on Thursday, 5 October, at 10 a.m.

(b) Adoption of the agenda and organization of work

In its resolution 7/1, entitled “Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto”, the Conference of the Parties 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 Group to consider meeting on an annual basis, as needed, and to hold its meetings consecutively with other working groups of the Conference, in order to ensure the effective use of resources.



The proposed organization of work¹ (see annex) was prepared in accordance with Conference resolution 7/1, in order to enable the Working Group to perform its mandated functions within the time and according to the conference services available to it. The resources available to the Working Group will permit the holding of four plenary meetings over two days, with interpretation into the six official languages of the United Nations.

The extended Bureau of the Conference of the Parties agreed on the dates for the tenth meeting of the Working Group, to be held in Vienna on 5 and 6 October 2023. On 6 June 2023, the secretariat submitted proposed agenda items to the extended Bureau, which were approved on 20 June 2023 by means of a silence procedure.

2. Determining who to charge with the crime of migrant smuggling: who is and who is not a migrant smuggler

Under the agenda item, the Working Group may wish to discuss practical challenges in addressing migrant smuggling as an organized crime, while ensuring criminal justice action is not inappropriately applied to those who do not commit smuggling crimes.

The Working Group may wish to facilitate discussion and exchange of national experience, challenges and existing or emerging practices regarding (a) the criminalization or non-criminalization of migrant smuggling network services (e.g. providers of halfway houses and other accommodation services along routes, legal services etc.); and (b) the implementation of provisions or practices to ensure “non-liability” for migrant smuggling offences (especially for smuggled migrants and humanitarian actors). Recalling that the Smuggling of Migrants Protocol and its parent Convention, the Organized Crime Convention, both require the criminalization of several distinct forms of conduct related to migrant smuggling (e.g. enabling illegal stay, acts related to fraudulent travel or identity documents, and acts related to being an accomplice to migrant smuggling) and provide exceptions to those requirements, States parties might benefit from exchange on related national practice.

Delegations may wish to share case-based experience, adding to the existing material in the United Nations Office on Drugs and Crime case law database on the smuggling of migrants. Although some elements of the topic have been partially addressed by the Working Group in previous sessions, the Working Group has not had a focused and detailed discussion on distinguishing between potential offenders or migrant smuggling offences, or on related challenges and emerging better practices of States.

Documentation

Background paper prepared by the Secretariat on determining who to charge with the crime of migrant smuggling: who is and who is not a migrant smuggler ([CTOC/COP/WG.7/2023/2](#))

3. Developments, challenges and best practices in preventing and combating the smuggling of migrants by sea

Under the agenda item, the Working Group may wish to further discussion at an expert level on this issue, which it has previously prioritized. While migrant smuggling by sea is a distinct issue with its own specific complexities and there is a growing realization that migrant smuggling routes are diverse, complex and connect States across regions and continents, migrant smuggling by sea is a global issue. While smuggling by sea accounts for only a portion of all migrant smuggling and most likely a significantly smaller portion than migrant smuggling by land and air, more deaths occur at sea. The perilous methods and conduct smugglers use in their pursuit of

¹ A document containing the details of the organization of work for the tenth meeting of the Working Group on the Smuggling of Migrants is available on the website of the meeting (www.unodc.org/unodc/en/treaties/CTOC/working-group-on-the-smuggling-of-migrants-2023.html).

maximizing profits are a major cause of accidents, claiming the lives of migrants smuggled at sea, and those methods create great challenges for criminal justice responses. Key recurring issues relate to safety of life at sea, jurisdiction, interception, disembarkation, and international cooperation.

Delegations may wish to share, and discuss how to increase, available information on smuggling of migrants by sea at the global level, as information in this area is often fragmented, incomplete and inconsistent.

Documentation

Background paper prepared by the Secretariat on developments, challenges and best practices in preventing and combating the smuggling of migrants by sea ([CTOC/COP/WG.7/2023/4](#))

4. Matters pertaining to the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

Paragraph 12 of the procedures and rules for the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto states, in regard to the review process, that “the Conference and its working groups shall add the matter to their agendas as an item consistent with their areas of expertise and without prejudice to their respective existing mandates. Taking into consideration the progressive nature of the review [...], the content of the agendas and scheduling of the meetings of the working groups will be decided by the Conference or the extended Bureau in a timely manner. In order to ensure that the working groups may contribute to the Mechanism while also carrying out their respective existing mandates, each working group should dedicate no more than one agenda item per session to matters pertaining to the functioning of the review process.”

The Working Group will be provided with an update on the current developments and progress of the Review Mechanism so that States parties can share their experiences so far.

Furthermore, pursuant to paragraph 53 (h) of the procedures and rules for the functioning of the Mechanism, a written summary of the discussions during the constructive dialogues, which were held on Friday, 1 July 2022 following the conclusion of the ninth session of the Working Group on the Smuggling of Migrants, held on 27 and 28 June 2022, was prepared by the Chair of the Working Group and has been made available on the web page of the Mechanism.²

Documentation

Background paper prepared by the Secretariat on the status of the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols there. ([CTOC/COP/WG.3/2023/3-CTOC/COP/WG.4/2023/3-CTOC/COP/WG.7/2023/3](#))

5. Other matters

As no issues to be raised under agenda item 5 have come to the attention of the Secretariat, no documentation regarding the item is currently foreseen.

² Available at www.unodc.org/unodc/en/organized-crime/intro/review-mechanism-untoc/constructive_dialogues/som_2022.html.

6. Adoption of the report

The Working Group is expected to adopt a report on its meeting, the draft of which will be prepared by the Secretariat.

Annex

Proposed organization of work

<i>Date and time</i>	<i>Agenda item</i>	<i>Title or description</i>
Thursday, 5 October		
10 a.m.–1 p.m.	1 (a)	Opening of the meeting
	1 (b)	Adoption of the agenda and organization of work
	2	Determining who to charge with the crime of migrant smuggling: who is and who is not a migrant smuggler
3–6 p.m.	2	Determining who to charge with the crime of migrant smuggling: who is and who is not a migrant smuggler (<i>continued</i>)
	3	Developments, challenges and best practices in preventing and combating the smuggling of migrants by sea
Friday, 6 October		
10 a.m.–1 p.m.	3	Developments, challenges and best practices in preventing and combating the smuggling of migrants by sea (<i>continued</i>)
	4	Matters pertaining to the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto
3–6 p.m.	5	Other matters
	6	Adoption of the report