



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 5 and 6 October 2023

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 Working Group on the Smuggling of Migrants met for the first time from 30 May to 1 June 2012 and held a total of nine meetings prior to its meeting in 2023.

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 of the Parties decided, *inter alia*, that the Working Group 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 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, which are annexed to Conference resolution 9/1 establishing the Mechanism, envisage a significant role for the working groups of the Conference, including the Working Group on the Smuggling of Migrants, in the Mechanism. According to paragraph 12 of the procedures and rules, the Conference and its working groups are to add the review process to their agendas as an item consistent with their areas of expertise and without prejudice to their respective existing mandates. In addition, in order to ensure that the working groups are able to 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.



II. Recommendations

4. At its meeting held in Vienna on 5 and 6 October 2023, the Working Group on the Smuggling of Migrants adopted the recommendations presented below.

A. General recommendations

5. The Working Group recommended that the Conference of the Parties consider the following recommendations for adoption:

Recommendation 1

States parties are encouraged to undertake, in line with the applicable international instruments, measures to enable the real-time exchange of information by their competent authorities in relation to the smuggling of migrants, including direct communication between law enforcement officials and contact persons in accordance with national legislation or, when appropriate, liaison officers, as an essential component of investigations and international cooperation.

Recommendation 2

States parties are encouraged to review their national legislation addressing the smuggling of migrants with a view to aligning it with the provisions of the Smuggling of Migrants Protocol, including by considering the use of the United Nations Office on Drugs and Crime (UNODC) Model Law against the Smuggling of Migrants, as a fundamental step in improving international cooperation to effectively prevent and combat this form of crime.

Recommendation 3

States parties are encouraged to establish, within their means, effective mechanisms to identify the health needs of smuggled migrants and to ensure that they have adequate access to health care.

Recommendation 4

The Working Group recommends to the Conference that the following topics, inter alia, be considered at future meetings of the Working Group:

(a) Preventing and combating the smuggling of migrants through international cooperation while addressing its root causes, in line with the provisions of the United Nations Convention against Transnational Organized Crime and the Protocols thereto;

(b) Protection and assistance measures for smuggled migrants.

B. Recommendations on determining who to charge with the crime of migrant smuggling: who is and who is not a migrant smuggler

6. The Working Group recommended that the Conference of the Parties consider the following recommendations for adoption:

Recommendation 5

States parties are encouraged to consider the different roles of those involved in the smuggling of migrants and to improve international cooperation, including capacity-building, in this regard.

Recommendation 6

States parties are encouraged to consider strengthening efforts to investigate online migrant smuggling *modi operandi*. States parties are also encouraged to consider undertaking investigations on digital financial transactions related to the smuggling of migrants, in full respect of applicable data protection regulations.

C. Recommendations on developments, challenges and best practices in preventing and combating the smuggling of migrants by sea

7. The Working Group recommended that the Conference of the Parties consider the following recommendations for adoption:

Recommendation 7

States parties are encouraged, within their means and in compliance with relevant and applicable international instruments, and in full respect of the human rights of smuggled migrants, to improve their capacity to monitor and prevent the smuggling of migrants by sea, including by disrupting the financial and material resources of the criminal groups involved in such smuggling and by enhancing security measures at seaports, including, as appropriate, in cooperation with private sector entities, such as fishing and shipping companies.

Recommendation 8

States parties are encouraged, in accordance with national law and relevant applicable international instruments, to establish operating procedures to provide, within their means, all necessary protection and assistance and to undertake fair risk assessment and return procedures for smuggled migrants.

Recommendation 9

States parties are encouraged, when addressing the smuggling of migrants at sea, to carry out search and rescue operations in accordance with domestic law and applicable international instruments and, as appropriate, in cooperation with neighbouring countries, and to arrange disembarkation in a place of safety as a priority.

Recommendation 10

States parties are encouraged, in accordance with their domestic law, to exchange information on their case law related to the interpretation of the Smuggling of Migrants Protocol, in order to strengthen international cooperation, including mutual legal assistance.

Recommendation 11

In criminal proceedings, States parties are encouraged to respect the principle of non-liability of smuggled migrants for the fact of being smuggled, in accordance with article 5 of the Smuggling of Migrants Protocol, without prejudice to the criminalization of other forms of conduct that constitute an offence under domestic law.

Recommendation 12

States parties are encouraged to address the protection of lives at sea, in accordance with the applicable international instruments and arrangements, and to strengthen the related capacity of authorities involved in border management, search and rescue and law enforcement at sea.

Recommendation 13

States parties are encouraged, in accordance with their domestic law, to provide or continue providing international cooperation and assistance with a view to addressing the root socioeconomic causes of the smuggling of migrants in countries of origin, to provide assistance to transit countries, based on their needs and priorities, and to enhance and facilitate legal migration pathways in cooperation with countries of origin.

Recommendation 14

States parties are encouraged to consider strengthening their collaboration with the International Criminal Police Organization (INTERPOL) Specialized Operational Network against migrant smuggling.

D. Recommendations on matters pertaining to the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

8. The Working Group recommended that the Conference of the Parties consider the following recommendations for adoption:

Recommendation 15

States parties are encouraged to nominate focal points and ensure their responsiveness in the process of the Implementation Review Mechanism, as well as to consider providing financial support to the secretariat for the purpose of advancing the progress of the Mechanism.

Recommendation 16

The secretariat should continue its outreach to States to advance the progress of the Implementation Review Mechanism and overcome challenges, including through the organization of briefings on the Mechanism for States parties and regional groups as well as for States at the pre-accession or pre-ratification stage in relation to the Smuggling of Migrants Protocol.

III. Summary of deliberations

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

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

10. At its 1st meeting, on 5 October 2023, the Working Group considered agenda item 2, entitled “Determining who to charge with the crime of migrant smuggling: who is and who is not a migrant smuggler?”. Under agenda item 2, the discussion was facilitated by Silvia Artavia, Specialist in the Department of Trafficking in Persons, Department of Migration (Costa Rica); Fiona Atupele Mwale, Judge of the High Court (Malawi); Emeldo Márquez Pitti, Prosecutor, Prosecutor’s Office against Organized Crime (Panama); and Gerald Tatzgern, Head of the Department for Combating the Smuggling of Migrants, Federal Criminal Police Office (Austria).

11. Ms. Artavia highlighted the national response to migrant smuggling in Costa Rica, noting that the country was mainly a country of transit. She indicated that Costa Rica had drafted a law against migrant smuggling, improving on existing

instruments. In that regard, Costa Rica had worked together with prosecutors and specialized investigators, with support from UNODC under the strengthening transregional action and responses against the smuggling of migrants (STARSOM) initiative, to mainstream prevention in its response to the smuggling of migrants. The panellist also highlighted that information and communications technologies helped smugglers carry out their activities without having to be present in the territory, making it difficult for investigators to arrest them. She concluded that it would be essential to increase the capacities of investigators with regard to cybercrime in order to better dismantle smuggling networks.

12. Ms. Mwale gave an overview of the challenges encountered in the response to the smuggling of migrants in Malawi, noting that the focus at the national level had been mainly on trafficking in persons, at the expense of the smuggling of migrants. The panellist highlighted that there were several syndicates that facilitated migrant smuggling to South Africa for labour in mining and factories. Malawi was also a transit country for migrants coming from the Horn of Africa to South Africa. The panellist pointed out that national training efforts had largely related to trafficking in persons, which had resulted in some cases of migrant smuggling being prosecuted under legislation on trafficking in persons. As such, given the deficiencies of evidence to prove the “exploitative purpose” element, most smugglers were acquitted. As a result, impunity continued. She also noted that the vulnerabilities of smuggled migrants and the violence that they experienced were not taken into account by law enforcement officials. Corruption had also been noted, with some cases showing law enforcement officers having facilitated smuggling during the process. Ms. Mwale highlighted limited financial resources and information-sharing, as well as a lack of capacity to repatriate migrants, as challenges hindering an effective response to the smuggling of migrants. Importantly, she concluded, combating the smuggling of migrants should be allocated financial resources in the national budget.

13. Mr. Pitti gave an overview of the response to the smuggling of migrants in Panama. In 2013, the country had enacted a law on the smuggling of migrants under which the individual who facilitated the crime and the one who assisted in its commission were both charged accordingly. In 2023 alone, approximately 395,000 migrants had been recorded entering Panama irregularly through the Darien Gap. At least 40 individuals had been charged with the smuggling of migrants. The panellist also outlined the achievements arising from the different operations that had been conducted in cooperation with neighbouring countries, with several smugglers having been arrested.

14. Mr. Tatzgern gave a presentation on the smuggling of migrants in Austria. Since the beginning of 2023, 460 migrant smugglers had been arrested in the country, and 725 investigations had been conducted in 2022. The panellist implored States to ensure the real-time exchange of intelligence, as sharing information days after the registration of an incident hampered effective responses to the smuggling of migrants. In addition, there was a need for heightened training and sensitization, as well as special expertise, to identify who the smugglers were. He also noted that technological developments posed challenges, especially in identifying the smugglers in technology-facilitated migrant smuggling. Mr. Tatzgern underscored that the smuggling of migrants was not a national challenge, but an international concern requiring international cooperation, including conducting joint operations, establishing rapid response mechanisms and accelerating the identification and investigation of smuggling of migrants cases.

15. Following the presentations by the panellists, speakers underscored the importance of applying a comprehensive approach to the smuggling of migrants that included, among other things, addressing socioeconomic factors; ensuring safe, orderly and regular migration; strengthening both domestic and international coordination, including through the establishment of joint investigation teams; and addressing the socioeconomic dimension, beyond criminal justice, in order to effectively prevent the smuggling of migrants. Speakers highlighted, inter alia, the

importance of enhancing synergies and the real-time exchange of information with other countries, as well as cooperation with diaspora communities, especially those from countries of origin, to enhance investigations and identify smugglers. Other speakers mentioned the need to identify those who engaged in the smuggling of migrants facilitated by online technology.

16. Speakers also emphasized the need to strengthen financial investigations as an approach to addressing the smuggling of migrants, supported by border operations and by the tracing and confiscation of assets and other proceeds of crime. They also noted the challenges associated with identifying financial proceeds of crime, as in most cases migrant smugglers used payment methods that were difficult to trace, such as cash payments. A speaker noted the involvement of some law enforcement officers in the crime of migrant smuggling, reinforcing the notion of corruption as a facilitator of the crime. One delegate highlighted the physical and mental health risks associated with the smuggling of migrants and emphasized the need for systematic research in order to better understand those risks.

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

17. At its 2nd meeting, on 5 October 2023, the Working Group considered agenda item 3, entitled “Developments, challenges and best practices in preventing and combating the smuggling of migrants by sea”. The discussion under agenda item 3 was facilitated by Lara Dominique B. Sanchez, Attorney, Inter-Agency Council against Trafficking Secretariat, Department of Justice (Philippines), and Murat Sezgin, Head of the Department of European Union and External Relations, Turkish Coast Guard Command (Türkiye).

18. Ms. Sanchez gave a presentation on the national approach of the Philippines to the smuggling of migrants by sea. She noted that the country did not yet have specific legislation on the smuggling of migrants; rather, the crime was addressed within the legislative framework for trafficking in persons, resulting in migrant smugglers being treated as human traffickers. Investigating and prosecuting crimes that transcended multiple jurisdictions presented challenges to the country. The panellist also noted that migrant smuggling networks were very organized and sophisticated, making it difficult to detect them and apprehend the perpetrators. She highlighted that the approach to migrant smuggling in her country was four-pronged, covering prevention and advocacy, protection and reintegration, prosecution and law enforcement, and partnerships and networking. She recommended enacting domestic legislation on the smuggling of migrants, establishing a national inter-agency structure to comprehensively address the smuggling of migrants by sea, and strengthening cross-border activities.

19. Mr. Sezgin highlighted that the smuggling of migrants was linked to, inter alia, unsustainable economic growth and food price increases that affected access to food, which had resulted in an increase in the number of irregular migrants. He noted that many routes to Europe passed through Türkiye and that the distances between shores were short enough for smuggled migrants and refugees to pass without being detected, but long enough for loss of life to occur, as people travelled in unseaworthy vessels. The panellist emphasized that saving lives remained at the core of his country’s response, with efforts being made to ensure a humanitarian perspective. He emphasized that inter-agency coordination was required in addressing the smuggling of migrants by sea. In Türkiye, the response was coordinated with other national institutions and with international organizations. In addition, he indicated that, in order to prevent irregular migration, the coastguard utilized many technological tools to conduct sea surveillance. He recommended that States enhance international cooperation and work together with countries of origin to respond to the crime effectively.

20. Following the presentations, delegates raised questions relating to new detection methods that had proven useful in preventing migrant smuggling by sea, gaps associated with set procedures for identifying migrants and refugees in distress at sea, the role of the private sector in that regard, and other issues. A speaker reiterated that smuggled migrants who were forced to take on a role in the smuggling process should not be held liable for smuggling.

21. In the ensuing discussions, speakers encouraged cooperation involving countries of origin, transit and destination, emphasizing that success was dependent on collaboration. Cooperation was particularly important in addressing the new and innovative methods used by migrant smugglers, including the increasing use of technology to facilitate the smuggling of migrants.

22. Some speakers implored States to also consider the socioeconomic factors that led to irregular migration, as well as to address the root causes of migration, including by undertaking development projects in countries of origin, and to ensure safe and regular migration pathways in order to close the space for smugglers. Speakers also noted that migrant smuggling should be curtailed before migrants embarked on their journeys by sea. Speakers also underlined the need to disrupt the supply chain of the small boats used in the smuggling process.

23. A speaker briefed the Working Group on the outcomes of the ministerial conference on the twentieth anniversary of the Organized Crime Convention, held in Palermo, Italy, on 29 September 2023, and emphasized the need to establish joint investigation teams and joint investigation bodies, with focal points to facilitate efficient information-sharing and cooperation.

24. Some speakers noted the particular importance of the principle of non-liability of migrants for being the object of smuggling. In addition, they noted the need to avoid penalizing humanitarian actors involved in search and rescue activities when such actions were driven by humanitarian concerns.

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

25. At its 2nd meeting, on 5 October 2023, the Working Group considered agenda item 4, entitled “Matters pertaining to the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto”.

26. Given that no lists of observations resulting from country reviews had yet been submitted, the Working Group was unable to consider substantive issues arising from reviews of the implementation of the Smuggling of Migrants Protocol. Instead, a representative of the secretariat delivered a presentation on the status of the review process, providing up-to-date information and an overview of the main challenges and technical assistance needs identified during the initial years of the process.

27. The representative of the secretariat highlighted that only 31 per cent of the reviews (60 out of 189 country reviews) had reached the substantive review stage. The delays in the review process were associated with multiple factors, including late nominations of national focal points, turnover or unresponsiveness of focal points, the limited resources available to the secretariat, and unmet translation requirements in one country review due to a lack of resources. The representative reminded States parties of the 70 per cent completion rate required of each group of States parties under review in order to advance to the next thematic cluster, as set out in paragraph 10 of the procedures and rules for the functioning of the Implementation Review Mechanism.

28. Following that presentation, the Co-Chair encouraged the secretariat to continue pursuing outreach efforts to States parties and delegations with a view to supporting the advancement of the process and overcoming possible challenges.

29. Some speakers requested the secretariat to organize briefings on the Implementation Review Mechanism for States parties and regional groups and to include such training activities in the pre-accession or pre-ratification stages in relation to the Smuggling of Migrants Protocol. One speaker shared information on her State's involvement as a reviewer in a country review, emphasizing the relevance of a voluntary on-site visit to the State under review and of the engagement with civil society organizations throughout the review process. She also encouraged States parties to consult the outcomes of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption that would be relevant to the Implementation Review Mechanism for the Organized Crime Convention. In addition, the speaker emphasized the significance of the legislative guides published by UNODC in supporting the review process.

D. Other matters

30. At its 2nd meeting, on 5 October 2023, the Working Group considered agenda item 5, entitled "Other matters".

31. States proposed possible topics for future meetings of the Working Group, which were captured in a recommendation included under "General recommendations" (see sect. II.A above).

IV. Organization of the meeting

A. Opening of the meeting

32. The tenth meeting of the Working Group on the Smuggling of Migrants was held in Vienna on 5 and 6 October 2023. Four meetings were held. As agreed by the extended Bureau of the Conference of the Parties by means of a silence procedure on 17 May 2023, the meeting was held in a hybrid format.

33. The meeting was opened by Vasiliki Kakosimou (Greece) and Francesco Testa (Italy), Co-Chairs of the Working Group. They addressed the meeting and presented an overview of the mandate of the Working Group, its objectives and the subjects under its consideration.

B. Statements

34. General introductory statements were made by representatives of the secretariat under agenda items 2, 3 and 4.

35. Under agenda item 2, with the Chair presiding, the discussion was led by Silvia Artavia (Costa Rica), Fiona Atupele Mwale (Malawi), Emeldo Márquez Pitti (Panama) and Gerald Tatzgern (Austria).

36. Under agenda item 3, with the Co-Chairs presiding, the discussion was led by the following panellists: Lara Dominique B. Sanchez (Philippines) and Murat Sezgin (Türkiye).

37. Under agenda items 2, 3 and 4, statements were made by representatives of the following parties to the Smuggling of Migrants Protocol: Algeria, Bahrain, Belarus, Brazil, Cyprus, Dominican Republic, Egypt, Eswatini, European Union, France, Greece, Guatemala, Indonesia, Italy, Latvia, Lithuania, Mexico, Netherlands (Kingdom of the), New Zealand, Poland, Russian Federation, Senegal, Sudan, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela (Bolivarian Republic of).

38. The observers for China, Iran (Islamic Republic of), Morocco, Pakistan and Zimbabwe also made statements.

39. The Working Group also heard a statement by the observers for INTERPOL, the International Organization for Migration (IOM), the Office of the United Nations High Commissioner for Refugees (UNHCR) and the World Health Organization (WHO).

40. An observer for the Islamic Republic of Iran also made a statement under agenda item 5.

C. Adoption of the agenda and organization of work

41. At its 1st meeting, on 5 October 2023, 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. 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.

42. As agreed by the extended Bureau of the Conference of the Parties, the meeting was held in a hybrid format.

43. To make the best use of the time available, no general statements were made during the meeting. Delegations had the option to submit general statements as well as their statements on the agenda items in writing. The texts of those statements are available on the website of the meeting.

D. Attendance

44. The following parties to the Smuggling of Migrants Protocol, including those connected remotely, were represented at the meeting: Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Botswana, Brazil, Bulgaria, Burkina Faso, Canada, Chile, Costa Rica, Cuba, Cyprus, Czechia, Dominican Republic, Ecuador, Egypt, El Salvador, Eswatini, European Union, Finland, France, Germany, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iraq, Italy, Japan, Kenya, Kuwait, Latvia, Lebanon, Libya, Lithuania, Malawi, Malta, Mexico, Myanmar, Namibia, Netherlands (Kingdom of the), New Zealand, Nicaragua, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Tunisia, Türkiye, Ukraine, United Kingdom, United States, Uruguay and Venezuela (Bolivarian Republic of).

45. The following States signatories to the Smuggling of Migrants Protocol were represented by observers, including those connected remotely: Bolivia (Plurinational State of), Sri Lanka and Thailand.

46. The following States that are not parties or signatories to the Smuggling of Migrants Protocol were represented by observers, including those connected remotely: Bangladesh, Brunei Darussalam, China, Colombia, Iran (Islamic Republic of), Israel, Jordan, Malaysia, Morocco, Pakistan, Qatar, Singapore, United Arab Emirates, Viet Nam and Zimbabwe.

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

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

49. The following intergovernmental organizations and mechanisms and United Nations entities were represented by observers, including those connected remotely: Andean Community, Commonwealth of Independent States, Cooperation Council for the Arab States of the Gulf, Council of Europe, International Development Law Organization, International Maritime Organization, INTERPOL, IOM, League of Arab States, Organization of American States, UNHCR and WHO.

50. A list of participants is contained in document [CTOC/COP/WG.7/2023/INF/1/Rev.1](#).

E. Documentation

51. The Working Group had before it the following:

(a) Annotated provisional agenda ([CTOC/COP/WG.7/2023/1](#));

(b) 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](#));

(c) 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](#));

(d) 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 thereto ([CTOC/COP/WG.3/2023/3-CTOC/COP/WG.4/2023/3-CTOC/COP/WG.7/2023/3](#));

(e) Conference room paper prepared by the Secretariat on topics for future meetings of the Working Group ([CTOC/COP/WG.7/2023/CRP.1](#)).

V. Adoption of the report

52. At its 4th meeting, on 6 October 2023, the Working Group adopted sections I, II, IV and V of the present report.
