



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

Distr.: General
27 June 2012

Original: English

Report on the meeting of the Working Group on the Smuggling of Migrants held in Vienna from 30 May to 1 June 2012

I. Introduction

1. In its resolution 5/3, 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 of the Parties to the United Nations Convention against Transnational Organized Crime welcomed the outcome of the consultations of Government experts held during its fifth session and decided to establish an open-ended intergovernmental interim working group, in accordance with article 32, paragraph 3, of the United Nations Convention against Transnational Organized Crime and rule 2, paragraph 2, of the rules of procedure for the Conference, to be chaired by a member of the Bureau, 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. The Conference decided that the open-ended intergovernmental interim working group on the smuggling of migrants should hold consultations on, inter alia, experiences and practices with regard to the implementation of the Smuggling of Migrants Protocol.

II. Recommendations

3. At its meeting held from 30 May to 1 June, the Working Group adopted the recommendations presented below.

A. Criminalization, investigation and prosecution

4. States that have not yet done so should be urged to consider ratifying or acceding to the Smuggling of Migrants Protocol.



5. States parties should continue to review and, as appropriate, strengthen their relevant legislation, including criminal legislation, and establish as criminal offences the acts covered by the Smuggling of Migrants Protocol and the Organized Crime Convention, including by introducing appropriate sanctions commensurate with the nature and gravity of the offence.
6. Although the smuggling of migrants and trafficking in persons may, in some cases, share some common features, States parties should consider them to be distinct crimes requiring separate legal, operational and policy responses.
7. States parties should intensify their efforts at the national and international levels with regard to cooperation in order to provide specialized training to law enforcement and judicial officials, such as training for those responsible for gathering evidence at the point of interception of smuggled migrants.
8. States parties should call upon appropriate partners, including the United Nations Office on Drugs and Crime (UNODC), to continue providing technical assistance to strengthen the capacity of States parties to criminalize, investigate and prosecute the smuggling of migrants, for example by assisting States parties in incorporating the provisions of the Smuggling of Migrants Protocol into their national legislation.
9. States parties should collect and share relevant information, including through the use of existing international and regional databases such as those of the International Criminal Police Organization (INTERPOL), in order to enhance the effectiveness of measures aimed at criminalizing, investigating and prosecuting the smuggling of migrants. Such information could include data on organized criminal groups involved in the smuggling of migrants.
10. States may wish to request UNODC to collect information and prepare a comprehensive global report on the smuggling of migrants, in close collaboration with States parties, to complement existing relevant reporting by international organizations such as the International Organization for Migration. The global report should include all types of information as listed in article 10 of the Smuggling of Migrants Protocol, including a focus on transregional routes and emerging routes and means of transportation. The report should also include the challenges encountered by States parties in combating the smuggling of migrants, good practices and lessons learned, legislative experiences and the use of administrative measures to prevent and combat the smuggling of migrants. The Working Group requests UNODC to do an assessment of the resource implications of the preparation of such a report.
11. States parties may wish to request UNODC to provide technical assistance with regard to investigating links that may exist between the smuggling of migrants and corruption, money-laundering and other forms of transnational organized crime.
12. States parties may wish to consider making smuggled migrants eligible for local witness protection programmes in order to encourage their cooperation and testimony and to facilitate investigations, prosecutions and convictions of criminals.
13. States parties may wish to consider including in their policies and practices mechanisms that would allow smuggled migrants to assist in criminal investigations and the prosecution of smugglers, for instance by granting them temporary residency permits in transit or destination countries, or allowing them to testify from

their countries of origin, including, where appropriate, through the use of videoconferencing, or allowing the witness to legally return to a transit or destination country in order to testify.

14. States parties may wish to consider raising awareness of the penalties for the offence of the smuggling of migrants, especially those committed under aggravating circumstances, so that those penalties may better serve as deterrents.

15. In criminalizing the smuggling of migrants, States parties may wish to consider establishing aggravating circumstances to the offences mentioned in article 6, paragraph 1, of the Smuggling of Migrants Protocol, in addition to the aggravating circumstances listed in article 6, paragraph 3, of the Protocol, in order to facilitate effective implementation of the provisions of the Protocol.

16. In investigating and prosecuting the smuggling of migrants, States parties should, where appropriate, ensure that financial investigations take place concurrently, with a view to tracing, freezing and confiscating proceeds acquired through such crime.

17. In efforts aimed at the detection and investigation of the smuggling of migrants, including efforts involving the use of special investigative techniques, States parties should take into account the safety and rights of the persons involved.

18. States parties could consider strengthening the security of identity and travel documents, including by following the plan of the International Civil Aviation Organization for the replacement of all manually read documents with biometric documents, and by strengthening document examination capacity. States parties may wish to consider establishing as a criminal offence the misuse of identity to obtain identity documents for the purpose of smuggling migrants.

19. States parties may consider establishing and/or improving coordination mechanisms among relevant agencies at the national level in order to reconcile priorities and strengthen concerted action against the smuggling of migrants.

20. States parties could consider ways to enhance cooperation at all levels to prevent and combat the crimes covered by the Smuggling of Migrants Protocol that are committed by means of using new technologies, especially the Internet; such cooperation could include more effective exchange of information and good practices relating to issues of criminalization, investigation and prosecution.

B. Protection and assistance

21. States parties should respect the fundamental human rights of smuggled migrants, irrespective of their migration status, nationality, gender, ethnicity, age or religion.

22. States parties may wish to request States to exchange their views and to share information and good practices on the measures taken to protect the human rights of smuggled migrants.

23. States parties should adopt appropriate measures, including legislation, if necessary, to protect smuggled migrants from violence, discrimination, torture or other cruel, inhuman and degrading treatment or punishment, as well as violation of

their rights, and should provide smuggled migrants who have been victims of other crimes with effective access to justice and to legal assistance when it is envisaged in national legislation.

24. States parties may wish to consider setting up hotlines to allow smuggled migrants to identify violations of their rights and to refer them to the appropriate services to provide for their protection.

25. States parties may wish to consider involving their consular and diplomatic representations abroad in enhancing the protection of smuggled migrants and the provision of assistance to such migrants. In case of detention, States parties should give special attention to their obligations under the Vienna Convention on Consular Relations, as referred to in article 16, paragraph 5, of the Smuggling of Migrants Protocol.

26. States parties are encouraged to enhance their cooperation to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in accordance with the international law of the sea.

27. Taking into account chapter II of the Protocol, States parties should give special attention to dangers to the life and safety of migrants smuggled by sea and should prioritize the preservation of life and safety upon detection of a vessel used to smuggle migrants.

28. States parties should address the special needs of vulnerable categories of smuggled migrants, including pregnant women, women with children and unaccompanied minors.

29. States parties should take into account the international protection framework for refugees and asylum seekers.

30. States parties may wish to consider involving civil society in the response to the smuggling of migrants, in particular by contributing protection and assistance measures and developing communication channels between authorities involved in the detection, investigation and prosecution of the smuggling of migrants and service providers who could assist in the provision of assistance to smuggled migrants.

31. States parties should inform migrants of their rights under domestic law, including the right to appeal, and, where applicable, their options for voluntary return.

C. Prevention

32. States parties should take a comprehensive approach to preventing the smuggling of migrants that includes measures relating to effective border control, strengthened document integrity and control, capacity-building, awareness-raising and measures relating to the root causes of such smuggling.

33. In reinforcing document integrity, States parties should bear in mind that criminal networks involved in smuggling migrants evade such measures by submitting fraudulent passport and visa applications; measures should therefore be

put in place to scrutinize such applications and to detect when documents have not been issued by the competent authorities.

34. States parties should, as appropriate, strengthen the security of their identity and travel documents and their capacity to detect fraudulent documents. They may wish to consider requesting technical assistance from other States parties or regional or international organizations to that effect.

35. States parties should develop public information campaigns, which could involve the media and Internet-based social networks, in order to raise awareness about the adverse effects of the smuggling of migrants and to warn persons vulnerable to being smuggled, especially young people and their families, about the dangers involved.

36. States parties may wish to consider raising awareness among transport companies, especially airline companies, of the risks associated with document fraud. They may also wish to provide penalties for companies that do not comply with their obligation to ensure the authenticity and validity of the documents of passengers travelling across international borders. States parties may also wish to consider establishing mechanisms for obtaining timely passenger information from such companies.

37. States parties should consider enhanced scrutiny when issuing visas, as well as enforcing the terms of their visas to help prevent their countries from being used as a transit point by persons involved in operations for smuggling migrants.

38. States parties should consider the importance of bilateral and multilateral cooperation, including cooperation at the regional level and with neighbouring countries, in order to strengthen border control, conduct joint investigations, exchange operational information and intelligence informally and develop training programmes to raise the awareness of relevant actors.

39. States parties are encouraged to use existing operational databases, such as INTERPOL databases, to exchange information, including on offenders and on persons suspected of committing any of the crimes set forth in article 6 of the Protocol and on lost or stolen documents.

40. States are encouraged to consider establishing data-collection and analysis centres that could assist in developing evidence-based knowledge and measures to prevent and suppress the smuggling of migrants.

41. States parties may wish to reinforce their prevention efforts through the deployment of liaison officers and participation in joint investigation teams. At the national level, the creation of integrated border enforcement teams and the establishment of coordination mechanisms involving all agencies engaged in preventing and combating the smuggling of migrants could contribute to preventing such crime.

42. To complement efforts to prevent and combat the smuggling of migrants, international organizations may be requested to make use of existing inter-agency forums addressing those issues, such as the Global Migration Group.

D. International cooperation

43. States should use, to the fullest extent possible, formal and informal forms of cooperation and coordination to combat the smuggling of migrants at the international, regional and national levels.
44. States parties should utilize the Organized Crime Convention as a legal basis for international cooperation, in particular in the form of mutual legal assistance and extradition, to combat the smuggling of migrants.
45. States are encouraged to respond within a reasonable time period to requests for international cooperation in cases relating to the smuggling of migrants.
46. States should carry out joint capacity-building activities and exchange of expertise, in particular in the areas of processing intelligence and other information and handling sensitive information, in order to prevent, detect and respond to the smuggling of migrants.
47. Recognizing that mutual trust is an instrumental precondition to effective international cooperation, States may wish to engage in confidence-building measures such as establishing and strengthening operational networks and vetting procedures at the national, regional and international levels.
48. States may wish to establish standard operating procedures and channels for the exchange of intelligence and other information, including regarding possible threats, on a regular basis and in a timely and secure manner.
49. States may wish to encourage joint investigations, as an effective means of sharing intelligence and other information.
50. In accordance with article 8 of the Smuggling of Migrants Protocol, States parties should notify the Secretary-General of the designation of an authority to receive and respond to requests for assistance to combat the smuggling of migrants by sea. States may wish to inform UNODC of such designations and include the information in the directory of competent national authorities.
51. States may wish to establish open and direct lines of communication, including contact details of relevant agencies and individuals, in order to facilitate informal and formal cooperation to combat the smuggling of migrants.
52. States may wish to consider establishing among countries of origin, transit and destination programmes for returning smuggled migrants. States may request the assistance of international intergovernmental organizations and civil society, where appropriate.
53. States should consider repatriating smuggled migrants directly to their place of origin, giving due regard to their rights.
54. States parties may wish to call on UNODC to facilitate and deliver technical assistance and to continue to develop and disseminate technical assistance tools to be used in countering the smuggling of migrants.

E. Proposed areas for future work

55. The Working Group should continue advising and assisting the Conference in carrying out its mandate with regard to the Smuggling of Migrants Protocol, with a view to improving international cooperation in that area.

56. The Working Group may wish to request the Secretariat to organize, for the next meeting of the Working Group, technical panel discussions on good practices involving the use of special investigative techniques in cases of the smuggling of migrants and on the establishment of multi-agency centres to enable information on the smuggling of migrants to be shared and responses to such smuggling to be coordinated between agencies and between similar centres in other States parties.

57. States parties may wish to consider how to prioritize in the most efficient way the future work of the Working Group and to consider including on the agenda for each of its meetings an item on follow-up to the recommendations adopted at its previous meeting.

58. The Conference should discuss the future programme of work of the Working Group, which may include topics on intelligence-sharing, international cooperation, protection and assistance and other relevant items.

III. Organization of the meeting

A. Opening of the meeting

59. The meeting of the Working Group on the Smuggling of Migrants was held in Vienna from 30 May to 1 June 2012. Six meetings were held.

60. The meeting was opened by Erasmo Lara Cabrera (Mexico), who chaired the 1st and 2nd meetings of the Working Group. The Chair of the Working Group, Eugenio Curia (Argentina), chaired the 3rd, 4th, 5th and 6th meetings. Introductory statements were made by the Secretariat under agenda items 2-5.

61. At the opening of the meeting, statements were made by the representatives of El Salvador (on behalf of the Group of 77 and China), Ecuador (on behalf of the Group of Latin American and Caribbean States) and Canada. A statement was also made by the Secretariat.

62. Under agenda items 2-5, with the Chair presiding, the discussion was led by the following panellists: Michael J. Surgalla Jr. (United States of America), Alfis Suhaili (Indonesia), Esteban B. Conejos Jr. (Philippines), Emmanuel Guevara Isla (Mexico) and Scott Hatfield (United States of America).

63. Statements were made by representatives of the following States parties to the Smuggling of Migrants Protocol: France, Philippines, Mexico, Canada, Azerbaijan, Australia, United States, Russian Federation, Netherlands, Belgium, Guatemala, New Zealand, Turkey, Argentina, Tunisia, El Salvador, Algeria, Spain, Saudi Arabia, Romania, Ecuador, Nigeria, Portugal, Switzerland, Lebanon, United Kingdom of Great Britain and Northern Ireland, China, Chile and Austria.

64. The observers for Japan and Thailand made statements.

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

B. Adoption of the agenda

66. At its 1st meeting, on 30 May 2012, the Working Group adopted by consensus the following provisional agenda:

1. Organizational matters:
 - (a) Opening of the meeting;
 - (b) Adoption of the agenda and organization of work.
2. Challenges and good practices in the criminalization, investigation and prosecution of the smuggling of migrants.
3. Challenges and good practices in the protection of and assistance to smuggled migrants.
4. Challenges and good practices in the prevention of the smuggling of migrants.
5. Challenges and good practices concerning cooperation and coordination, including the sharing of intelligence and other information, in response to the smuggling of migrants.
6. Other matters.
7. Adoption of the report.

C. Attendance

67. The following States parties to the Smuggling of Migrants Protocol were represented at the meeting: Algeria, Argentina, Australia, Austria, Azerbaijan, Belgium, Brazil, Burkina Faso, Canada, Chile, Costa Rica, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Guatemala, Hungary, Indonesia, Italy, Kenya, Lebanon, Lithuania, Mexico, Namibia, Netherlands, New Zealand, Nicaragua, Nigeria, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Slovakia, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, Ukraine, United Kingdom, United States and Venezuela (Bolivarian Republic of).

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

69. The following States signatories to the Protocol were represented by observers: Bolivia (Plurinational State of), Czech Republic, Japan, Luxembourg, Republic of Korea, Sri Lanka and Thailand.

70. The following States that are not parties or signatories to the Protocol were represented by observers: China, Colombia, Côte d'Ivoire, Cuba, Iran (Islamic Republic of), Malaysia, Morocco, Pakistan, Qatar, Sudan, Yemen and Zimbabwe.

71. Palestine, an entity having received a standing invitation from the General Assembly to participate as an observer in the sessions and work of all international conferences convened under its auspices, was represented.
72. The Office of the United Nations High Commissioner for Refugees was represented by an observer.
73. The International Organization for Migration, an intergovernmental organization, was represented by an observer.
74. A list of participants is contained in document CTOC/COP/WG.7/2012/INF.1/Rev.2.

D. Documentation

75. The documents before the Working Group are listed in the annex to the present report.

Annex

List of documents before the Working Group on the Smuggling of Migrants

<i>Document number</i>	<i>Agenda item</i>	<i>Title or description</i>
CTOC/COP/WG.7/2012/1	1 (b)	Provisional agenda and annotations
CTOC/COP/WG.7/2012/2	2	Challenges and good practices in the criminalization, investigation and prosecution of the smuggling of migrants
CTOC/COP/WG.7/2012/3	3	Challenges and good practices in the protection of and assistance to smuggled migrants
CTOC/COP/WG.7/2012/4	4	Challenges and good practices in the prevention of the smuggling of migrants
CTOC/COP/WG.7/2012/5	5	Challenges and good practices concerning cooperation and coordination, including the sharing of intelligence and other information, in response to the smuggling of migrants
CTOC/COP/WG.7/2012/CRP.1	5	Conclusions of the International Conference on the Smuggling of Migrants: Challenges of and Progress in Implementing the Protocol against the Smuggling of Migrants by Land, Sea and Air, held in Mexico City from 16 to 18 April 2012