



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

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**Review of the implementation of the United Nations
Convention against Transnational Organized Crime and
the Protocols thereto: expert consultation on travel and
identity documents**

Travel and identity documents

Note by the Secretariat

I. Introduction

1. At its second session, by decisions 2/3 and 2/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime decided to include in its programme of work for the third session, under the agenda items relating to implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime¹ (the “Trafficking in Persons Protocol”) and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime² (the “Migrants Protocol”) matters related to border measures, security and control of documents and legitimacy and validity of documents (CTOC/COP/2005/8, chap. I). On developing questionnaires to collect information relevant to the programme of work of the Conference of the Parties at its third session, the secretariat therefore included questions on the implementation by States parties of articles 11 (border measures), 12 (security and control of documents) and 13 (legitimacy and validity of documents) under the Trafficking in Persons and Migrants Protocols.³ Responses by States parties and signatories to those questions are reflected in the reports of the Secretariat on the implementation of the Trafficking in Persons Protocol and the Migrants Protocol (information

* CTOC/COP/2008/1.

¹ United Nations, *Treaty Series*, vol. 2237, No. 39574.

² United Nations, *Treaty Series*, vol. 2241, No. 39574.

³ Articles 11, 12 and 13 are, mutatis mutandis, identical under both Protocols.



received from States for the second reporting cycle, CTOC/COP/2006/6/Rev.1 and CTOC/COP/2006/7/Rev.1 respectively).

2. At its third session, held in Vienna from 9 to 18 October 2006, the Conference of the Parties adopted decision 3/3 on implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, in which it urged States parties to those Protocols to review their policies, legislation and regulatory regimes, especially with regard to the travel and identity documents referred to in article 12 of each of the Protocols, in order to ensure consistent and effective application of the obligations contained in the relevant articles of those Protocols.

II. Relevant provisions of the Trafficking in Persons and Migrants Protocols

3. Article 11 (border measures) in both the Trafficking in Persons Protocol and the Migrants Protocol requires States parties to strengthen their border controls to prevent and detect trafficking in persons and smuggling of migrants. States parties are also required to take measures to prevent means of transport operated by commercial carriers from being used in the commission of offences under the Protocols, including by establishing the obligation of commercial carriers to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State, as well as providing for sanctions in cases of violation of that obligation.

4. It should be noted in this regard that the strengthening of border controls and the resulting improvement in border security, in particular in the countries of destination, have led to a notable shift in the modus operandi of traffickers in persons and migrant smugglers. Trafficking and smuggling over land borders and moving persons concealed in vehicles over official border crossing points appear to be on the decrease, while various forms of identity-related crime, such as the misappropriation of genuine documents, the theft of blank documents that are then filled out with fabricated identity information, falsification, forgery, the unlawful issuance of documents and the procuring of passports or visas under false pretences, appear to be on the rise as means of deceiving border control officials.

5. Article 12 (security and control of documents) in both the Trafficking in Persons Protocol and the Migrants Protocol requires States parties to ensure that travel or identity documents issued by them are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or

issued; and to ensure the integrity and security of travel or identity documents issued by them and prevent their unlawful creation, issuance and use.^{4, 5}

6. Article 13 (legitimacy and validity of documents) in both the Trafficking in Persons Protocol and the Migrants Protocol further requires States parties, upon request, to verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in their name and suspected of being used for trafficking in persons or the smuggling of migrants.⁶

7. Also noteworthy is article 6 (criminalization) of the Migrants Protocol, which requires States parties to establish as criminal offences, when committed intentionally and in order to obtain a financial or other material benefit, not only the smuggling of migrants, but also, when committed for the purpose of enabling the smuggling of migrants, producing a fraudulent travel or identity document; procuring, providing or possessing such a document; and enabling by such means (that is, by producing, procuring or providing a fraudulent document) or other illegal means a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary legal requirements.⁷

⁴ The words “falsified or unlawfully altered, replicated or issued” should be interpreted as including not only the creation of false documents, but also the alteration of legitimate documents and the filling in of stolen blank documents. The intention was to include both documents that had been forged and genuine documents that had been validly issued but were being used by a person other than the lawful holder. See *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), pp. 413 and 525.

⁵ In their responses to the relevant questionnaires, most States parties reported the adoption of measures to implement article 12, including regular reviews of the production and issuance process and upgrading of the technology and equipment used for ensuring the security and control of documents (see CTOC/COP/2006/6/Rev.1 and CTOC/COP/2006/7/Rev.1).

⁶ In their responses to the relevant questionnaires, a majority of States parties confirmed that the verification of the legitimacy and validity of such documents was carried out within the framework of cooperation agreements with other States or on a case-by-case basis. The law enforcement and immigration authorities were mainly mentioned as being competent for such verification. The use of International Criminal Police Organization channels and mechanisms for verification purposes was also reported (see CTOC/COP/2006/6/Rev.1 and CTOC/COP/2006/7/Rev.1).

⁷ In their responses to the relevant questionnaire (on the Migrants Protocol, first reporting cycle), almost all States confirmed that acts of producing, procuring, providing or possessing travel or identity documents for enabling and facilitating the smuggling of migrants were criminalized in their domestic legislation. These offences were treated either as separate offences or as a preparatory step for the commission of the principal offence of smuggling of migrants and/or facilitating illegal residence, under provisions on attempt or complicity to commit the principal offence (CTOC/COP/2005/4/Rev.2).

III. Offences associated with travel and identity documents as manifestations of identity-related crime and their links to organized crime schemes and activities

8. Within the framework of its expert consultation on travel and identity documents, the Conference may wish to take into consideration the work of the secretariat in the more general field of identity-related crime.

9. Pursuant to Economic and Social Council resolution 2004/26, entitled “International cooperation in the prevention, investigation, prosecution and punishment of fraud, the criminal misuse and falsification of identity and related crimes”, the United Nations Office on Drugs and Crime (UNODC) convened an Intergovernmental Expert Group to Prepare a Study on Fraud and the Criminal Misuse and Falsification of Identity, which held meetings in March 2005 and January 2007. The results of the second meeting of the Group were submitted to the Commission on Crime Prevention and Criminal Justice at its sixteenth session (E/CN.15/2007/8 and Add.1-3). The findings of the Group were based on information provided by 46 Member States, of which 41 are parties to the United Nations Convention against Transnational Organized Crime and the Protocols thereto, and 37 are parties to both the Trafficking in Persons and Migrants Protocols. Many States expressed concern about identity crimes involving passports and other travel-related identity documents, considering them to be both a crime and a security issue, because passport systems are essential to preventing the entry of known criminal offenders and illegal migrants (see E/CN.15/2007/8/Add.3, para. 17).

10. The findings of the Group provided indications of links between identity-related crime and organized criminal groups. Situations reported in this regard included schemes involving trafficking in persons or the smuggling of migrants. The specialization of organized criminal groups in treating stolen or fabricated identity documents and information as a form of illicit commodity was highlighted, as well as the risk that such groups might develop the expertise to fabricate increasingly sophisticated identity documents or exploit weaknesses in issuance schemes, deceiving or corrupting authorities, in order to obtain documents, which could then be sold or exchanged for use in crime, particularly in cases of illicit trafficking and migration (see E/CN.15/2007/8/Add.3, paras. 14 and 18).

11. The findings of the Group demonstrated that a number of specific identity abuses were subsumed within broader crimes, such as forgery offences, which included the forgery of identity documents. Thus, the most commonly reported provisions in place to tackle such abuses were those on forgery and impersonation. Furthermore, some States reported the criminalization of offences that were specific to types of identification or identity considered particularly critical, such as passports or government identification (see E/CN.15/2007/8/Add.3, para. 12).

12. In its resolution 2007/20, entitled “International cooperation in the prevention, investigation, prosecution and punishment of economic fraud and identity-related crime”, the Economic and Social Council requested UNODC, subject to the availability of extrabudgetary resources, to facilitate cooperation between public and private sector entities on issues associated with identity-related crime. It also requested UNODC to provide legal expertise or other forms of technical assistance

to Member States reviewing or updating their laws dealing with identity-related crime, in order to ensure that appropriate legislative responses are in place.

13. In order to consider ways of implementing resolution 2007/20, the secretariat drew on the advice of a group of experts.⁸ The group considered in particular the relationship between identity-related crime and organized crime and noted that passport, trafficking and illegal migration-related offences accounted for a major portion of identity crime. In addition to legislative responses and international cooperation mechanisms that need to be in place to curb identity-related crime, the group also examined the need for strengthening preventive measures, including measures of “technical prevention”, which focus on the use of technology to secure information and develop the necessary infrastructure that would make it more difficult to tamper with identification documents, subvert or corrupt identification systems and obtain identification data for criminal purposes. The group further agreed that the development and delivery of technical assistance, requested by resolution 2007/20, would constitute a major part of the overall work on identity-related crime and that it would be important to assess the needs of requesting States, taking into consideration the context in which the assistance would be delivered, including the stance of the requesting State with regard to other relevant criminal offences, migration and passport issues, and the state of its general identity infrastructure.

IV. Possible questions for discussion by the Conference

14. The Conference of the Parties may wish to build upon the information already provided by States parties to the Organized Crime Convention and the Trafficking in Persons and Migrants Protocols, bearing also in mind more general issues of identity-related crime in their relevant aspects. In this context, the following questions are proposed for discussion:

- (a) Current trends:
 - (i) What are the current trends in identity-related crime committed to enable unlawful entry to a territory in the context of human trafficking, migrant smuggling or other criminal activities?
 - (ii) Are there indications of organized criminal groups specifically involved in the theft, falsification or forgery of documents?
- (b) Legislative and regulatory measures:
 - (i) What considerations should be taken into account to ensure adequate criminalization of offences related to producing fraudulent travel or identity documents and procuring, providing or possessing such documents?⁹

⁸ UNODC brought together a core group of experts to exchange views on the best course of action and the most appropriate initiatives that need to be pursued to combat identity-related crime. The “core group of experts” has met twice, in November 2007 and June 2008.

⁹ During discussions held during the third session of the Conference of the Parties, speakers had noted that national legislation in some countries did not criminalize producing a fraudulent travel or identity document of another country (CTOC/COP/2006/14, para. 109).

- (ii) What experiences have there been in establishing obligations for commercial carriers to ascertain that all passengers are in possession of proper travel documents?
- (c) Integrity and security of documents:
 - (i) What good practices exist in the field of improving the integrity and security of travel and identity documents? What experiences have there been in using biometric identifiers?
 - (ii) What practices and techniques have proven effective in the detection and identification¹⁰ of fraudulent travel and identity documents, by law enforcement officers and by forensic science laboratories?
- (d) Capacity-building:
 - (i) What experiences have there been in training embassy and consulate personnel to assist in the fight against fraudulent travel and identity documents, and the procurement of visas under false pretences?
 - (ii) What practices have been proven effective in improving the capacities of immigration and other relevant officials?
- (e) International cooperation:
 - (i) How can cooperation between States parties on the verification of the legitimacy and validity of travel or identity documents be improved?
 - (ii) What are the main difficulties encountered when cooperating with other States in preventing and combating identity-related crime? What measures have proven effective to foster law enforcement cooperation and the exchange of information on the use of false identities and altered and false documents (see article 27, para. 1 (e))?
- (f) Technical assistance: what are the priority technical assistance needs in the field of preventing and combating the unlawful creation, issuance and use of travel and identity documents?

¹⁰ “Detection” occurs where the law enforcement officer at the first line of inspection has concerns about the document but cannot define exactly the nature of those concerns. If a concern exists, further examinations and analyses involving forensic approaches and techniques would need to be undertaken, leading to the “identification” of a fraudulent document to an evidential standard.