



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 from 11 to 13 September 2017

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 first meeting of the Working Group was held from 30 May to 1 June 2012, the second from 11 to 13 November 2013 and the third from 18 to 20 November 2015.

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 would be a constant element of the Conference of the Parties, forwarding its reports and recommendations to the Conference, and encouraged the Working Group of the Conference to consider meeting on an annual basis, as needed, and to hold its meetings consecutively, in order to ensure the effective use of resources.

3. In its resolution 8/2, the Conference decided to continue the process of establishing the mechanism for the review of the implementation of the Convention and the Protocols thereto based on the recommendations contained in the report on the open-ended intergovernmental meeting to explore all options regarding an appropriate and effective review mechanism for the United Nations Convention against Transnational Organized Crime and the Protocols thereto, held in Vienna on 6 and 7 June 2016 (CTOC/COP/WG.8/2016/2). In the same resolution, the Conference also decided to elaborate specific procedures and rules for the functioning of the review mechanism for consideration and adoption by the Conference at its ninth session, which was to be guided by the principles and characteristics set out in Conference resolution 5/5.

4. In resolution 8/2, the Conference further decided that the review mechanism would progressively address all the articles of the Convention and the Protocols thereto for each of the instruments that States parties were parties to, grouped in thematic clusters in accordance with the content of their provisions and that, in order to review each thematic cluster of articles, the relevant working group would, in the next two years, with the assistance of the Secretariat, define a short, precise and focused self-assessment questionnaire.



5. Also in resolution 8/2, the Conference requested all States parties to submit responses to the existing questionnaires on the implementation of the Convention and the Protocols thereto.

II. Recommendations

6. At its meeting held in Vienna from 11 to 13 September, the Working Group on the Smuggling of Migrants adopted the recommendations presented below.

A. Recommendations on specific topics

1. Use of the Organized Crime Convention to address challenges relating to the smuggling of migrants

Recommendation 1

States parties are encouraged to strengthen implementation of the United Nations Convention against Transnational Organized Crime and the Smuggling of Migrants Protocol, especially with reference to corruption, money-laundering and confiscation of the proceeds of crime.

Recommendation 2

States parties are encouraged to enhance efforts to confiscate the proceeds of crime related to the smuggling of migrants, and are encouraged to address the linkages between the profits arising from migrant smuggling and other forms of crime.

Recommendation 3

States parties are encouraged to set up mechanisms whereby information on cases involving the smuggling of migrants can be quickly and effectively shared between authorities on a national, regional and international basis.

Recommendation 4

States parties should ensure that data from a broad range of sources, including data from phones, computers, videos, pictures, and e-mail, and data regarding financial flows, are gathered, analysed and shared in investigations and prosecutions of smugglers.

Recommendation 5

States parties should ensure that measures are in place to best facilitate the gathering of evidence in migrant smuggling cases, including through special protection for witnesses throughout the investigative and judicial process.

Recommendation 6

States parties should seek to train, including through the delivery of technical assistance, practitioners in the use of formal and informal legal cooperation, including the use of the United Nations Convention against Transnational Organized Crime when required as a legal basis for extradition and mutual legal assistance, in combating the smuggling of migrants.

Recommendation 7

States parties are encouraged to establish, in accordance with their national law, joint investigation teams through bilateral or multilateral agreements and to make use of special investigative techniques in combating the smuggling of migrants.

Recommendation 8

States parties should make maximum use of the international cooperation provisions of the United Nations Convention against Transnational Organized Crime, such as article 13 on international cooperation for purposes of confiscation, which should be viewed as augmenting article 12 on confiscation and seizure, to facilitate international cooperation to confiscate assets wherever they may be found.

Recommendation 9

States parties are encouraged to make full use of mutual legal assistance tools, noting that informal bilateral consultations have proved to be effective in facilitating the provision of assistance, in particular by facilitating prompt responses to requests for evidence and other assistance.

Recommendation 10

States parties should ensure that they comply with the requirements under the Smuggling of Migrants Protocol to inform the Secretary-General of the national authorities designated to assist in the identification of vessels involved in migrant smuggling at sea, and consider, where appropriate, entering into bilateral agreements to facilitate rapid real-time coordination and cooperation during maritime operations.

Recommendation 11

States parties, in line with their national legislation and the Protocol, should ensure that commercial carriers operating in air, on land and at sea are aware of their responsibilities as carriers and of the risks and consequences of migrant smuggling.

Recommendation 12

Bearing in mind recommendation 11, States parties should also consider adopting awareness-raising measures applicable to other commercial entities not engaged in passenger transportation that might be misused in migrant smuggling.

2. Examination of the “financial and material benefit” aspect of the definition of smuggling of migrants

Recommendation 13

Keeping in mind that the “financial and material benefit” is the purpose of smuggling of migrants within the international definition as set in the Smuggling of Migrants Protocol and, often, the reason why migrants’ lives are put at risk, States parties should, as appropriate, prioritize investigations and prosecutions of migrant smuggling cases where there is a clear financial benefit.

Recommendation 14

States parties should work to increase awareness of the value of following financial flows regarding migrant smuggling cases.

B. General recommendations

Recommendation 15

States parties should ensure that they are complying with their obligations under article 18, including seeking to ensure they facilitate and accept, without undue or unreasonable delay, the return of smuggled migrants who are its nationals or who have the legal rights of permanent residence in its territory, at the time of return.

III. Summary of deliberations

7. At its 2nd and 3rd meetings, on 11 and 12 September 2017, the Working Group considered agenda item 2, entitled “Preparation of the questionnaire to review the implementation of the Smuggling of Migrants Protocol”. Under the agenda item, the Chair invited States to provide comments of a general nature related to the draft questionnaire.

8. Many speakers made reference to Conference resolution 8/2 and to the mandate contained therein related to the preparation by the Working Group of a short, precise and focused self-assessment questionnaire to review the implementation of the Smuggling of Migrants Protocol. In that regard, it was also noted that, in the same resolution, the Conference referred to the existing questionnaires and requested all States parties to submit responses to those questionnaires. Some speakers noted that, therefore, some flexibility was needed in the interpretation of resolution 8/2 and that the Conference of the Parties should consider more closely the relationship between the existing and the new questionnaires, including how the text of the 2004 and 2005 questionnaires could be used and/or improved. Some speakers underscored that it was planned that the first two years of the review mechanism would be dedicated to the discussion of preparing the self-assessment questionnaires, as indicated in table 2 of the annex to resolution 8/2, and highlighted the necessity of revisiting the draft self-assessment questionnaires after the review mechanism had been established in order to adapt the questionnaires to the mechanism.

9. Many speakers said that the new questionnaires should take into account existing relevant information that States had provided through the knowledge management portal known as Sharing Electronic Resources and Laws on Crime (SHERLOC), as well as replies to the existing questionnaires, other reviews or questionnaires of regional instruments, and other relevant international legal instruments. Doing so would avoid duplication of effort and undue burden to the experts in charge of replying to the questionnaires. It was also mentioned that the new questionnaires should be complementary and thereby avoid asking overlapping questions. In addition, it would be necessary for the Conference to first agree on the content of the Convention questionnaire in order to decide on the exact content of the Protocol questionnaire, for example, regarding the international cooperation provisions of the Convention as they applied to the crime of smuggling of migrants.

10. Most speakers said that the questionnaire should not go beyond the scope of the obligations contained in the Protocol; however, it was also mentioned that flexible and constructive questions could be considered. Furthermore, it was suggested that the questionnaire should identify technical assistance needs, lessons learned and best practices in implementing the Protocol.

11. Most speakers noted that discussions regarding the specific procedures and rules for the functioning of the review mechanism for the Convention and the Protocols were ongoing and looked forward to the upcoming second open-ended intergovernmental meeting that had been established for that purpose. It was further noted that once the Working Group had a clearer picture of what the review mechanism would look like, the content of the questionnaires could be further discussed and determined.

12. The Working Group analysed the text of the draft questionnaire prepared by the Secretariat and provided comments on each of its questions. During the meeting, the Secretariat and the Chair prepared a non-paper containing an advanced version of the draft questionnaire, based on the comments received during the discussions. The Working Group had before it the advanced version and provided further comments to it. The outcome of the discussion would be reported in a distinct non-paper to be circulated by the Chair among delegations for further consideration.

Other matters

13. At its 4th meeting, on 12 September 2017, the Working Group considered agenda item 5, entitled “Other matters”.

14. Several speakers supported the suggestion that States review all the sources of information available relating to the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto and bring this information to the attention to the Conference of the Parties. Some States parties encouraged the Secretariat to follow up on this suggestion, as appropriate.

IV. Organization of the meeting

A. Opening of the meeting

15. The fourth meeting of the Working Group on the Smuggling of Migrants was held in Vienna from 11 to 13 September 2017. Five meetings were held during the session.

16. 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

17. General introductory statements were made by a representative of the Secretariat under agenda items 1 to 4.

18. Under agenda items 3 and 4, with the Chair presiding, the discussion was led by the following panellists: Wanchai Roujanavong (Thailand), Alejandro Martínez Peralta (Mexico), Gerald Tatzgern (Austria) and Anne Gallagher (Australia).

19. Under agenda items 2 to 5, statements were made by representatives of the following States parties to the Smuggling of Migrants Protocol: Algeria, Australia, Bahamas, Belgium, Canada, Chile, Cuba, Egypt, El Salvador, Greece, Guatemala, India, Indonesia, Iraq, Italy, Japan, Mexico, Netherlands, Nigeria, Oman, Philippines, South Africa, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay.

20. The representative of the European Union, a regional economic integration organization that is a party to the Smuggling of Migrants Protocol, also made a statement.

21. The observer for Thailand, a signatory to the Smuggling of Migrants Protocol, also made a statement.

22. The observers for Colombia and Iran (Islamic Republic of) also made statements.

C. Adoption of the agenda and organization of work

23. At its first meeting, on 11 September 2017, 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. Preparation of the questionnaire to review the implementation of the Smuggling of Migrants Protocol.

3. Use of the United Nations Convention against Transnational Organized Crime to address challenges relating to the smuggling of migrants.
4. Examination of the “financial and material benefit” aspect of the definition of smuggling of migrants.
5. Other matters.
6. Adoption of the report.

D. Attendance

24. The following States parties to the Smuggling of Migrants Protocol were represented in the Working Group: Afghanistan, Algeria, Angola, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Belarus, Belgium, Brazil, Burkina Faso, Burundi, Canada, Chile, Côte d’Ivoire, Croatia, Cuba, Cyprus, Czechia, Dominican Republic, Ecuador, El Salvador, Estonia, France, Germany, Greece, Guatemala, Hungary, India, Indonesia, Iraq, Italy, Japan, Kuwait, Lebanon, Luxembourg, Malta, Mexico, Myanmar, Namibia, New Zealand, Nigeria, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Serbia, Slovakia, South Africa, Spain, Tunisia, Turkey, Ukraine, United Kingdom, United States, Uruguay and Venezuela (Bolivarian Republic of).

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

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

27. The following States that are not parties or signatories to the Smuggling of Migrants Protocol were represented by observers: China, Colombia, Iran (Islamic Republic of), Israel, Jordan, Morocco, Nepal, Pakistan, Qatar, Singapore, State of Palestine, Sudan, United Arab Emirates, Viet Nam and Yemen.

28. The Department of Political Affairs of the Secretariat was represented by an observer.

29. The following intergovernmental organizations were represented by observers: European Union Agency for Fundamental Rights, International Centre for Migration Policy Development, International Organization for Migration and Organization for Security and Cooperation in Europe.

30. A list of participants is contained in document CTOC/COP/WG.7/2017/INF/1/Rev.1.

E. Documentation

31. The Working Group had before it the following:

- (a) Annotated provisional agenda (CTOC/COP/WG.7/2017/1);
- (b) Draft questionnaire prepared by the Secretariat for the review of the implementation of the Smuggling of Migrants Protocol, in accordance with Conference resolution 8/2 (CTOC/COP/WG.7/2017/2);
- (c) Background paper prepared by the Secretariat on the use of the United Nations Convention against Transnational Organized Crime to address challenges relating to the smuggling of migrants (CTOC/COP/WG.7/2017/3);
- (d) Background paper prepared by the Secretariat on the examination of the “financial and material benefit” aspect of the definition of smuggling of migrants (CTOC/COP/WG.7/2017/4).

V. Adoption of the report

32. On 13 September 2017, the Working Group adopted the present report on its meeting.
