



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

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## Working Group on the Smuggling of Migrants

Vienna, 18-20 November 2015

Item 5 of the provisional agenda\*

**Other matters**

## Consolidated recommendations of the Working Group on the Smuggling of Migrants

Note by the Secretariat

### 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.
2. In its resolution 7/1, the Conference of the Parties to the Organized Crime Convention decided 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.
3. At its meeting, held on 14 July 2015, the Extended Bureau of the Conference approved the preparation of a background document for the sixth session of the Working Group on the Smuggling of Migrants, in which all recommendations made by previous sessions of the Working Group would be consolidated.
4. The present background paper was prepared by the Secretariat to assist the Working Group in its deliberations.

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\* CTOC/COP/WG.7/2015/1.



## **II. Recommendations in the area of prevention and awareness-raising**

### **A. Recommendations adopted by the Working Group at its first meeting, held in Vienna from 30 May to 1 June 2012**

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

**B. Recommendations adopted by the Working Group at its second meeting, held in Vienna from 11 to 13 November 2013**

14. States parties are invited to address the root causes of the smuggling of migrants through comprehensive crime prevention, social, economic, health, education and justice policies.

15. States parties are invited to cooperate effectively in addressing the root causes of smuggling of migrants in a comprehensive manner and with a balanced perspective on both the supply and demand sides, as a step towards a better implementation of the Smuggling of Migrants Protocol.

**III. Recommendations in the area of protection of the rights of smuggled migrants and assistance to smuggled migrants**

**A. Recommendations adopted by the Working Group at its first meeting, held in Vienna from 30 May to 1 June 2012**

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

17. States parties should adopt appropriate measures, including legislation, if necessary, to protect smuggled migrants from violence, discrimination, torture or other cruel, inhuman or 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.

18. 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.

19. 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.

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

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

22. States should consider repatriating smuggled migrants directly to their place of origin, giving due regard to their rights.
23. 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.
24. 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.
25. 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.
26. States parties should take into account the international protection framework for refugees and asylum seekers.

**B. Recommendations adopted by the Working Group at its second meeting, held in Vienna from 11 to 13 November 2013**

27. States parties should take the appropriate measures, such as developing guidelines to ensure that the human rights of smuggled migrants are respected and that the safety and security of smuggled migrants are granted utmost priority; that the investigation of smuggling of migrants is sensitive to the special needs of vulnerable migrants, such as women and children; and that return is not hindered or delayed unnecessarily.
28. States parties should, at all times, give priority to the life, safety and well-being of, and respect for the human rights of, the migrants who are the object of the smuggling when conducting investigations related to migrant smuggling cases, such as by ensuring an appropriate balance in investigating smugglers and migrants. To that effect, risks should be constantly assessed prior to and during investigations.
29. States parties should, where appropriate and consistent with their obligations under the Vienna Convention on Consular Relations and other relevant treaties, notify without delay the consular authorities of the State of the nationality of the smuggled migrant, with the approval of the individual concerned, and, where relevant, the social welfare authorities and provide access to assistance, particularly to vulnerable migrants, especially women and children, and facilitate return.

## **IV. Recommendations in the area of criminalization, investigation and prosecution of migrant smuggling**

### **A. Recommendations adopted by the Working Group at its first meeting, held in Vienna from 30 May to 1 June 2012**

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

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

## **B. Recommendations adopted by the Working Group at its second meeting, held in Vienna from 11 to 13 November 2013**

42. States parties are encouraged to adopt a holistic approach in undertaking investigations of smuggling of migrants cases, supported by bilateral and multilateral cooperation, in accordance with national legislation.

43. Pursuant to article 20 of the Organized Crime Convention, and in accordance with national legislation, States parties should make use of a range of special investigative techniques in smuggling of migrants cases, commensurate with the needs of the investigation, as an effective means of gathering intelligence and evidence.

44. In applying special investigative techniques, States parties should consider appropriate laws regarding evidence and its admissibility in prosecutions.

45. States parties may consider, in accordance with national law, making use of controlled delivery methods to investigate smuggling of migrants cases, while ensuring the full respect of the rights of migrants.

46. The Working Group on the Smuggling of Migrants requested the Secretariat to continue providing technical assistance to Member States, upon request, to support their efforts to accede to the Smuggling of Migrants Protocol or to implement the Protocol, including by strengthening legal frameworks and the capacity of criminal justice practitioners to effectively address the smuggling of migrants.

## **V. Recommendations in the area of partnerships, coordination of efforts and cooperation, including international cooperation**

### **A. Recommendations adopted by the Working Group at its first meeting, held in Vienna from 30 May to 1 June 2012**

47. 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.

48. 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.
49. 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.
50. 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.
51. 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.
52. 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.
53. 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.
54. 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.
55. 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.
56. 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.
57. States are encouraged to respond within a reasonable time period to requests for international cooperation in cases relating to the smuggling of migrants.
58. 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.
59. 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.

60. 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.

61. States may wish to encourage joint investigations as an effective means of sharing intelligence and other information.

62. 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.

63. 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.

## **B. Recommendations adopted by the Working Group at its second meeting, held in Vienna from 11 to 13 November 2013**

64. States parties are encouraged to take the necessary measures, where appropriate and in accordance with domestic legislation, in order to establish multi-agency centres to effectively implement the Smuggling of Migrants Protocol.

65. States parties may consider appointing a senior official to guide the work of a multi-agency centre.

66. States parties are encouraged to identify and address common challenges in establishing such centres by utilizing existing good practices and experience in other jurisdictions and by requesting technical assistance, where necessary.

67. Recognizing that mutual trust and transparency is an instrumental precondition for effective coordination, States parties may wish to develop a national strategy for multi-agency centres that brings together the mandates of each agency and ensures, for example, that the analysis of information and intelligence is centrally processed.

68. States parties should involve, in accordance with national legislation, a broad spectrum of agencies in their multi-agency centres for policy development, planning and the sharing of information on the smuggling of migrants. States parties may also wish to consider encouraging their relevant competent authorities to coordinate their operations through a multi-agency centre, to hold regular meetings and, where appropriate, to share intelligence and information and undertake investigations of smuggling of migrants offences, where relevant.

69. States parties should promote cooperation with similar multi-agency centres established by other States parties.

70. The Working Group on the Smuggling of Migrants requested the Secretariat to prepare more detailed and practical guidance regarding the establishment of multi-agency centres.

71. States parties, especially those with common borders, should promote effective and efficient sharing of information, which may include investigative findings, in a manner consistent with their respective domestic, legal and administrative systems.
72. States parties to the Convention that are countries of origin, transit and destination of smuggled migrants are encouraged to enhance cooperation in a comprehensive manner to develop effective measures to prevent the smuggling of migrants, while ensuring the protection of the rights of smuggled migrants.
73. States parties are encouraged to ensure that measures taken to promote informal cross-border cooperation and information-sharing complement and strengthen measures of formal cooperation, keeping in mind that evidence gathered must meet the standard of proof in a court of law.
74. In recognition of the usefulness of informal cooperation and information-sharing in early operational stages to assist in the gathering of intelligence and evidence in smuggling of migrants cases, States parties may wish to consider providing their criminal justice authorities with the appropriate instruments in order to facilitate direct informal communication and the exchange of information with relevant foreign competent authorities, in accordance with national law.
75. States parties are encouraged to expand informal cooperation and information-sharing measures not only to address the investigation and prosecution of smuggling of migrants cases but also to protect the rights of smuggled migrants, in accordance with domestic law.
76. States parties are encouraged to assist each other in a bilateral or multilateral manner through the provision of technical assistance and the development of measures to exchange information and ensure that the return of smuggled migrants is not hindered or delayed unnecessarily, on the basis of the principles of national sovereignty, solidarity and the fair sharing of responsibility.
77. States parties are encouraged to take measures, as appropriate, to support the cooperation between liaison officers in addressing the smuggling of migrants.
78. Recognizing the difficulty in monitoring all border crossings, States parties are encouraged to support cross-border cooperation to address the smuggling of migrants.
79. States parties are encouraged to implement article 18 of the Smuggling of Migrants Protocol, including by negotiating agreements for the orderly return of smuggled migrants.
80. The Working Group requested UNODC to continue its efforts to assist States parties to share their experiences and good practices at the national, regional and international levels.
81. States parties are encouraged to consider adopting or adapting the model of the voluntary reporting system developed by UNODC at the request of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime as a means of gathering and sharing information on the smuggling of migrants and related conduct in a harmonized and continuous manner

## **VI. Recommendations in the area of research, data collection and analysis**

### **A. Recommendations adopted by the Working Group at its first meeting, held in Vienna from 30 May to 1 June 2012**

82. 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.

83. 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 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.

### **B. Recommendations adopted by the Working Group at its second meeting, held in Vienna from 11 to 13 November 2013**

84. States parties should consider using the UNODC Digest of Organized Crime Cases and support and contribute to the knowledge management portal known as Sharing Electronic Resources and Laws against Organized Crime (SHERLOC), recently launched by UNODC, to promote the exchange of information.

## **VII. Other recommendations concerning areas of work for the Conference of the Parties, the Working Group and the United Nations Office on Drugs and Crime**

### **A. Recommendations adopted by the Working Group at its first meeting, held in Vienna from 30 May to 1 June 2012**

85. 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.

86. 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.

87. 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.

88. 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.

## **B. Recommendations adopted by the Working Group at its second meeting, held in Vienna from 11 to 13 November 2013**

89. The Working Group on the Smuggling of Migrants recommended that the Conference, at its seventh session, should consider initiating discussions regarding the possibility that the Working Group develop and follow a workplan for its future meetings.

90. The Working Group on the Smuggling of Migrants recommended to the Conference that the following topics, inter alia, be considered at future meetings of the Working Group:

(a) Smuggling of vulnerable migrants, such as children, including unaccompanied children;

(b) Practical measures to prevent the smuggling of migrants, such as visa on arrival, public information campaigns and training sessions on fraudulent documents;

(c) Organized crime aspects of the smuggling of migrants, including financial investigations and responses targeting the proceeds of crime;

(d) Smuggling of migrants by sea;

(e) Criminal justice responses, including investigations and prosecutions of perpetrators of migrant smuggling operations.

91. Recalling the tenth anniversary of the entry into force of the Organized Crime Convention and the Protocols thereto and taking into consideration articles 32 and 37 of the Convention, States parties and UNODC should continue to promote the full implementation of the Convention and the Smuggling of Migrants Protocol, with a view to identifying existing gaps, challenges and priorities.

92. States parties, in preventing and combating the smuggling of migrants, are invited to take into account, where appropriate and in accordance with national legislation, the experience of relevant stakeholders, including international and regional organizations, the private sector, academia and civil society.