



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

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**Review of the implementation of the Protocol to Prevent,
Suppress and Punish Trafficking in Persons, Especially
Women and Children, supplementing the United Nations
Convention against Transnational Organized Crime**

Implementation of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime**

Analytical report of the Secretariat

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* CTOC/COP/2005/1.

** The present report was submitted after the deadline owing to the need for additional consultations to reflect the most up-to-date information available.



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I. Introduction

A. Legislative background

1. By its resolution 55/25 of 15 November 2000, the General Assembly adopted the United Nations Convention against Transnational Organized Crime (annex I) and two supplementary protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (annex II), and the Protocol against the Smuggling of Migrants by Land, Sea and Air (annex III).

2. In accordance with article 32, paragraphs 1 and 2, of the Convention, a Conference of the Parties to the Convention was established and the Secretary-General of the United Nations convened the inaugural session of the Conference in Vienna from 28 June to 9 July 2004, less than one year following the entry into force of the Convention on 29 September 2003 pursuant to its article 38, paragraph 1. The Trafficking in Persons Protocol had been in force since 25 December 2003, pursuant to its article 17, paragraph 1, and consideration of its implementation was therefore included in the agenda of the first session of the Conference of the Parties.

3. In accordance with article 32, paragraphs 1 and 3, of the Convention, the Conference of the Parties is to agree upon mechanisms for achieving the objectives of improving the capacity of States parties to combat transnational organized crime and of promoting and reviewing the implementation of the Convention, focusing in particular on periodically reviewing the implementation of the Convention and making recommendations to improve that implementation (art. 32, para. 3 (d) and (e)).

4. In order to achieve those specific objectives, the Conference of the Parties is to acquire the necessary knowledge of the measures taken by States parties in implementing the Convention and the difficulties encountered by them in doing so through information provided by them (art. 32, para. 4). Furthermore, the Convention requires States parties to provide the Conference with information on their programmes, plans and practices, as well as legislative and administrative measures to implement the Convention (art. 32, para. 5).

5. In accordance with article 37 of the Convention and article 1, paragraph 2, of the Trafficking in Persons Protocol, the provisions of the Convention apply, *mutatis mutandis*,¹ to the Protocol unless otherwise provided therein.

B. Mandate of the Conference of the Parties

6. At its first session, by decision 1/5, the Conference of the Parties decided to carry out the functions assigned to it in article 32 of the Convention by, *inter alia*, establishing a programme of work for reviewing periodically the implementation of the Trafficking in Persons Protocol (see CTOC/COP/2004/6 and Corr.1, chap. I). In the same decision, the Conference of the Parties also decided that, for its second session, the programme of work would cover the following areas:

(a) Consideration of the basic adaptation of national legislation in accordance with the Trafficking in Persons Protocol;

(b) Commencement of the examination of criminalization legislation and difficulties encountered in the implementation of article 5 of the Trafficking in Persons Protocol;

(c) Enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Trafficking in Persons Protocol;

(d) Exchange of views and experience regarding the protection of victims and preventive measures, gained primarily in the implementation of articles 6 and 9 of the Trafficking in Persons Protocol, including awareness-raising.²

7. In the same decision, the Conference of the Parties requested the Secretariat to collect information from States parties and signatories to the Protocol, in the context of the above programme of work, using for that purpose a questionnaire to be developed in accordance with guidance provided by the Conference of the Parties at its first session; requested States parties to the Trafficking in Persons Protocol to respond promptly to the questionnaire circulated by the Secretariat; invited signatories to provide the information requested; and requested the Secretariat to submit an analytical report based on the responses received to the Conference of the Parties at its second session.

C. Reporting process

8. A draft questionnaire on the implementation of the Trafficking in Persons Protocol was brought to the attention of the Conference for review and comments at its first session (CTOC/COP/2004/L.1/Add.1). The final text of the questionnaire, as approved by the Conference, was disseminated to States parties and signatories to the Protocol in November 2004 with a view to obtaining the required information in accordance with decision 1/5.

9. The Secretariat considered it appropriate to disseminate the questionnaire also to non-signatory States, since this would be in line with the spirit of inclusiveness that characterized the negotiation process of the Convention and its Protocols and with the already stated objective of the General Assembly and the Conference of the Parties of promoting the universal nature of the instruments and striving to achieve universal adherence to them. The Secretariat believed that encouraging non-signatory States to participate in the information-gathering system of the Conference would be a way to assist them in gaining experience on how States that were already parties to the Trafficking in Persons Protocol had adjusted their legal and institutional framework in order to respond to the challenges posed by this criminal activity. Such experience could be constructive in the context of future discussions at the national level in the process of ratification of or accession to the Convention and the Protocol.

10. By means of information circulars, the Secretariat reminded States parties to the Trafficking in Persons Protocol of their obligation to provide information and invited signatories to do likewise by 29 July 2005.

11. As at 29 July 2005, the Secretariat had received responses from 56 States, of which 37 were parties to the Trafficking in Persons Protocol, 13 were signatories and 6 non-signatories.³ As at the same date, the Protocol had received

117 signatures and 87 ratifications, which means that 43 per cent of States parties had responded to the questionnaire, many of them also providing copies of their relevant legislation.

12. Among the States parties to the Protocol that responded to the questionnaire, the breakdown by regional group of States Members of the United Nations was as follows: Group of African States: 5; Group of Asian States: 4; Group of Eastern European States: 10; Group of Latin American and Caribbean States: 8; and Group of Western European and Other States: 10. Of the signatories that responded to the questionnaire, 1 belonged to the Group of African States, 1 to the Group of Asian States, 2 to the Group of Eastern European States, 1 to the Group of Latin American and Caribbean States and 8 to the Group of Western European and Other States. Of the non-signatories that responded to the questionnaire, 1 belonged to the Group of African States, 4 to the Group of Asian States and 1 to the Group of Latin American and Caribbean States.

D. Scope and structure of the report

13. The present analytical report contains a summary and a first analysis of the relevant replies, which highlight the progress made towards meeting the requirements set out in the Trafficking in Persons Protocol and, at times, the difficulties that States are facing in implementing its provisions.

14. The structure of the report follows the guidance given by the Conference of the Parties in its decision 1/5. The report thus contains information on the basic adaptation of national legislation in relation to the requirements of the Trafficking in Persons Protocol and also addresses the following aspects: (a) examination of the legislation criminalizing trafficking in human beings and the difficulties encountered in incorporating the relevant basic provisions of the Protocol; and (b) the enhancement of international cooperation and the development of technical assistance to overcome those difficulties or other problems generally related to the implementation of the Protocol.

15. Issues relating to the implementation of articles 6 and 9 of the Protocol, on measures for the protection and assistance of victims of trafficking and prevention respectively, which in accordance with decision 1/5, is one of the components of the programme of work for the second session of the Conference of the Parties, were not addressed in the questionnaire and are therefore not reflected in the present report. That was because the decision of the Conference was taken on the understanding that preventive policies and measures adopted for the protection of victims of trafficking constituted substantive areas for action to which more time should be devoted in subsequent sessions, after having addressed the basic criminalization and international cooperation standards and requirements. However, the Conference deemed it appropriate to begin an initial round of exchange of views and experience in these areas during its second session.

16. As also highlighted in the questionnaire itself, the provisions of the Convention on international cooperation apply, *mutatis mutandis*, to the Trafficking in Persons Protocol and therefore any information received from States related to international cooperation requirements under the Protocol is included in the analytical report on the implementation of the Convention (CTOC/COP/2005/2).

17. The present report does not purport to be comprehensive or complete, as it reflects the situation in less than half of the States parties to the Protocol.

II. Analysis of national legislation and measures in relation to the relevant provisions of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

A. Definition and criminalization requirements

1. Definition and criminalization of trafficking in persons at the national level

18. Article 5, paragraph 1, of the Trafficking in Persons Protocol requires States parties to establish as a criminal offence the conduct of trafficking in persons, as defined in the Protocol (see below). Most of the States submitting replies to the questionnaire indicated that this conduct was criminalized in their domestic legal framework. Of those submitting a negative response, Sri Lanka indicated that this type of criminal offence did not exist in its legislation. Jamaica reported that the problem of trafficking had never existed in the country and therefore no legislative action had been taken. Mauritius stated that its domestic legislation covered only one specific form of trafficking in children, where a person caused parents to abandon their child or acted as an intermediary between parents and those willing to adopt the child. Angola reported that its legislation penalized prostitution, but not necessarily for the purpose of exploitation. Azerbaijan and South Africa reported on action undertaken to amend current legislation. New legislation was also under consideration in Tunisia. Afghanistan indicated that national efforts were ongoing to deal with the problem of trafficking in persons and in particular to address the relevant legislative aspects.

19. Most of the States criminalizing trafficking in their legislation stated that the offence was defined in accordance with the definition contained in article 3, subparagraph (a), of the Protocol.⁴ Negative responses reflected, inter alia, lack of legislation providing for a definition and incorporation of trafficking components in other provisions of domestic legislation (Angola, Brazil, Estonia, Malaysia and Myanmar), including provisions on procuring (promotion and/or facilitation of prostitution), child pornography and generally protection of minors (Mexico), as well as lack of reference to the means used to commit the offence (Azerbaijan and Chile) and a narrow concept of the purpose of trafficking only for prostitution (Chile). Chile also reported that trafficking in minors within its national territory was covered by its domestic legislation, as opposed to trafficking in adults, which was not.

20. Many States referred to amendments of their national legislation that had already been put in place (Brazil⁵ and El Salvador⁶) or to ongoing or intended law reform action with a view to ensuring compliance with the requirements of the Protocol (Angola, Azerbaijan, Chile, Greece, Honduras, Jamaica, Lithuania, Malaysia, Myanmar, Peru, Sri Lanka and Switzerland), covering illegal activities linked to trafficking, such as child pornography (Ecuador), and generally child

sexual exploitation (Mexico) or removal of organs (Costa Rica, the Czech Republic and Portugal) or, finally, further streamlining existing legislation (Canada and Latvia).

21. In relation to the specific acts referred to in the Protocol definition of “trafficking in persons”, almost all countries replying to the questionnaire reported that the action of trafficking, as established in their domestic legal framework, consisted of recruitment,⁷ transportation,⁸ transfer,⁹ harbouring¹⁰ and receipt of persons.¹¹

22. The vast majority of countries responding to the questionnaire and verifying domestic definition of trafficking in accordance with the Protocol requirements also confirmed that their legislation identified as means used to commit the trafficking offence, the threat or use of force,¹² other forms of coercion,¹³ abduction,¹⁴ fraud,¹⁵ deception,¹⁶ abuse of power,¹⁷ abuse of position of vulnerability¹⁸ and the giving or receiving of payments or benefits to achieve the consent of a person having control over another person.¹⁹ The consideration of means used in the trafficking process (violence, intimidation and abuse of authority) as aggravating circumstances to the basic offence was also reported by Chile.

23. Furthermore, the responses received from States reflected the national approaches as to what was included in the concept of the exploitative purpose of the trafficking offence. All those replying to the questionnaire identified in this respect the exploitation of the prostitution of others or other forms of sexual exploitation, while most of them also mentioned forced labour or services,²⁰ slavery or practices similar to slavery,²¹ servitude²² and the removal of organs.²³

24. In view of the fact that the Protocol does not define the ambit of the “purpose of exploitation” in an exhaustive manner, States were also asked to specify whether their domestic legislation allowed for the inclusion of any other illegal act in the exploitative purpose of the trafficking offence. In that connection, responses confirming that option made reference to additional forms of conduct, such as forcing a person to commit an offence (Belgium and France), illegal use of tissue (Slovakia), involuntary domestic servitude or bonded labour (the Dominican Republic and Nigeria), forced marriage (El Salvador), illegal adoption (Costa Rica, the Dominican Republic and El Salvador), forced begging (Belgium and Romania), as well as exploitation in a way that places the victim in distress (Sweden).

25. Pursuant to article 3, subparagraph (b), of the Protocol, the consent of a victim of trafficking in persons to the intended exploitation is to be irrelevant where any of the means set forth in the definition of trafficking in persons have been used. Most States responding to the questionnaire confirmed that their legislation was in line with that requirement, thus ensuring that traffickers could not use consent as a defence against trafficking charges.

26. Only a few States reported otherwise, namely, that the consent of the victim of trafficking in persons was taken into consideration under their domestic legislation. Of these, Ecuador referred to the provision of its Penal Code that established aggravating circumstances in cases where the victim was devoid of the capacity to consent. Honduras and the Republic of Moldova did not provide further explanation to support their responses. Latvia reported on the specific provision of its legislation that criminalized trafficking in persons for sexual exploitation to a foreign State and noted that it was essential to establish whether a trafficked person gave his or her

consent to trafficking or not, “because this condition may change the grounds of criminal liability and, thus, the applicable penalty”. Namibia pointed out that, according to its legislation, the consent of the victim was considered where some of the specific means set forth in the Protocol’s definition were used (fraud, deception, abuse of power and abuse of a position of vulnerability). In one country the consent of the victim was not explicitly taken into consideration in the trafficking in persons provisions, but only assessed “when determining whether the trafficker induced the victim to act, which was an element of the offence” (Germany).

27. In relation to trafficking in children, as defined in the Protocol (i.e. under 18 years of age), the Protocol does not require the means used in the trafficking process to be established as an element of the offence (art. 3, subparas. (c) and (d)). In that connection, States were asked, on the one hand, to provide information on the age limits prescribed in this domestic legislation for considering a person a “child” and, on the other, whether the Protocol’s approach was reflected in their domestic legislation.

28. In relation to the first question, most responding States confirmed that their national legislation provided for the same age limit as the Protocol. Variations from that general practice were reported by a number of States²⁴ whose legislation contained different age thresholds (12, 14 or 16 years of age). Some used the terms “minors” and “adolescents” to define additional age groups.

29. With respect to the second question, two thirds of those replying to the questionnaire indicated that the means of trafficking were not a necessary element of the domestic offence of trafficking in children, while some laws considered such means aggravating circumstances to the principal offence (Belgium, the Dominican Republic, Latvia and Malta). The remaining third of the responses referred to national laws providing for the means of trafficking as a constituent element of the offence of trafficking in children. One of the reasons mentioned in those responses was the fact that the main trafficking offence was defined generally for all persons, means used and purposes (El Salvador). Another justification implied in the responses was that it was considered appropriate to include in the legislative language and further describe specific circumstances of abusive behaviour against children, especially in view of the fact that trafficking in children was an aggravated form of the basic offence (Belarus and Greece). Portugal reported that its legislation treated the means of trafficking as necessary only in cases of trafficking in minors to foreign countries for purposes of prostitution or other related acts. Kuwait and Poland did not provide further explanation to support their responses. Brazil made reference to offences against children established in its legislation, which encompassed some of the means of trafficking stipulated in the definition contained in the Protocol as forms of the basic criminal conduct, such as abduction of minors and adolescents, sale of children or pupils (“through the giving and receiving of payment”) and abuse of power against minors and adolescents.

30. The general overview of national approaches to trafficking in persons as a whole and its components (acts, means and purpose) could serve as a basis for further discussion by the Conference of the Parties, focusing on how best to achieve clarity and consistency in legislative responses. The mandatory requirement set forth in the Trafficking in Persons Protocol is to criminalize the conduct of trafficking in persons as a combination of its constituent elements and not those elements themselves. Individual elements prescribed in the definition of “trafficking

in persons”, such as coercion, abduction or prostitution,²⁵ need not be criminalized, although States parties are not precluded from establishing supplementary offences corresponding to those elements that could also support the purpose of the Protocol (see below).

31. The emphasis on the requirement to penalize trafficking in persons as a compound action that amalgamates and synthesizes the three definitional elements of the act committed, the means used and the purpose envisaged is of particular importance for the consolidation of more effective legislative responses to the problem. On the contrary, concentrating solely or heavily on, for example, the movement and transportation element may prove in many cases to be a partial approach. Indeed, at the time of movement or transportation, it is often unclear whether the person or persons concerned are trafficked. Neither the victims themselves, nor border officials, may know the ultimate purpose for which transfer is taking place, nor the ultimate conditions existing in the country of destination. In addition, it is not always clear at the time of movement whether its purpose is exploitation. It is usually only at the place of destination, where persons are subjected to exploitation in its various forms, that it can be obvious that trafficking has taken place. Until that point, movement may be for other (legitimate or illegitimate) reasons. Consequently, trafficking in persons needs to be seen and treated accordingly in its entirety as an activity commencing through the commission of certain defined acts but also resulting in an exploitative purpose, while encompassing the means involved for gaining control over the victim, which are crucial to ascertaining the irrelevance of his or her consent.

32. In the context of the discussions on the subject, emphasis may be appropriate on the added value of the definition of trafficking in persons contained in the Protocol and the fact that it represents a consensus-based conceptual standardization aimed at facilitating the convergence of national approaches on the delineation of the trafficking offence. That, in turn, was intended to serve as a framework for the establishment of domestic criminal offences that would lend themselves to promoting efficient and effective international cooperation in investigating and prosecuting trafficking cases. An additional issue for consideration could be that, unlike the offences of smuggling of migrants or trafficking in firearms, their parts and components and ammunition, which encompass the element of transborder activity, trafficking in persons may also occur within a single country.

33. The Conference of the Parties may wish to consider practical issues in relation to the requirements of the Trafficking in Persons Protocol related to the definition of trafficking in persons, such as the irrelevance of the consent of the victims when the listed means of trafficking were used or the non-consideration of such means when children are trafficked. The discussion on such issues would be of relevance especially to consideration of the implementation of chapter II of the Protocol and the measures taken by national authorities of States parties to assist and protect victims of trafficking in persons.

2. Distinction between trafficking in persons and smuggling of migrants

34. Most States responding to the questionnaire indicated that their national legislation treated trafficking in persons and smuggling of migrants separately as a result of their different nature either in terms of the consent of the person transferred or in terms of the ultimate purpose of exploitation (see also the analytical report on

the implementation of the Migrants Protocol (CTOC/COP/2005/4)). The only deviations from this general rule were reported by States lacking legislation on trafficking (Angola and Jamaica) and smuggling (Costa Rica) or by those with legislation which did not make the distinction between those crimes (Malaysia and Myanmar).

35. However, it should be noted that, as experience has shown, it is often difficult to ascertain whether a particular case falls under the definition of trafficking in persons or smuggling of migrants, as both activities share some common elements. Competent investigative authorities appear likely to launch a smuggling investigation, which may later focus on human trafficking if additional evidence comes to light. In such cases, appropriate attention needs to be devoted to making the necessary distinction in order to avoid situations in which victims of trafficking may not be afforded the protection foreseen by the Trafficking in Persons Protocol. For this reason, it would be important for Member States that have not yet done so to ensure the existence of the appropriate legal framework that differentiates with precision between the offences concerned and defines the appropriate criminal justice responses accordingly. This would also contribute to making judiciary and law enforcement personnel more familiar with both concepts, thus reducing the risk of uncertainty or inconsistency in action in their day-to-day casework.

3. Criminalization of individual offences associated with trafficking in persons

36. As mentioned above, States parties to the Trafficking in Persons Protocol are not precluded from criminalizing in their domestic legislation any individual conducts related to any of the stages of the trafficking process. States indicating in their replies that trafficking in persons was not criminalized under their national legal framework in accordance with the requirements of the Protocol were therefore also asked to provide information on any individual offences established domestically and associated with trafficking in persons. The Secretariat received responses from countries reporting that new legislation was under consideration (South Africa and Tunisia) and others indicating that trafficking in persons was defined domestically in accordance with the Protocol (El Salvador and Peru), thus making it possible to cover additional national approaches oriented towards establishing both the basic trafficking offence and separate crimes related to it.

37. Among the individual offences related to trafficking in persons identified by States responding to the questionnaire were the following: offences against sexual freedom, including forcing to, facilitation of and promotion of prostitution (Brazil, El Salvador, Estonia, Lithuania, Malaysia, Nigeria and Peru²⁶), procuring (Estonia), prostitution involving minors and child sexual tourism (Estonia and Peru), use of minors in pornography (El Salvador and Estonia), as well as corruption of minors (Brazil and El Salvador), including its aggravated form (El Salvador), and rape (South Africa). Other offences reported were the exploitation of a child's begging, including the establishment of aggravated circumstances if an organized criminal group was involved (Tunisia), illicit extraction of organs (Chile and Estonia), intimidation (South Africa), abduction and kidnapping (Estonia, Honduras and South Africa), illegal detention (Chile), hostage-taking, enslaving and sale or purchase of children (Estonia), child labour and forced labour (South Africa), assault in its various forms (South Africa), money-laundering (Chile and Estonia), illegal entry (South Africa), sequestration (Chile) and corruption (South Africa).

Switzerland reported that, according to case law, all the stages of the process of trafficking in persons were covered by the term “human trafficking”.

38. As already mentioned, the option of prosecuting related offences could support the purposes of the Trafficking in Persons Protocol and be useful too in States where a distinct criminal offence does not yet exist or where the penalties for trafficking do not sufficiently reflect the seriousness of the crime. There may also be cases where the existing evidence is not sufficient to support prosecution for trafficking in persons, but may be adequate for prosecuting related offences. The prosecution of accused individuals for additional or overlapping offences may also be useful in demonstrating before the court the seriousness of a particular trafficking operation. In some instances, for example, evidence relating to certain aspects of a trafficking operation, such as the total number of victims, length of time of the operation, the corruption involved or the seriousness of the harm done to the victims, may only be fully revealed by bringing additional charges before the court on related offences.

4. Criminalization of attempt to commit the offence of trafficking in persons

39. Despite the fact that the obligation to criminalize the attempt to commit the offence of trafficking in persons is subject to the basic concepts of the legal system of States parties (art. 5, para. 2 (a)), most of the responses received from States confirmed the establishment of criminal liability at the domestic level also for those attempting to commit the basic trafficking offence. Only a few exceptions were reported of States lacking legislative provision on this issue (Azerbaijan and Jamaica). One country (the Philippines) provided a negative response on the understanding that no stages of trafficking were provided for in its legislation, pointing out, at the same time, that the specific law on child abuse and exploitation treated certain acts as an attempt to commit trafficking in children, although those acts were not those contemplated by the Protocol. The information provided was not extended to more specific issues as to what exactly constituted an attempt in trafficking cases. In that connection, some countries reported that such issues were regulated in the general provisions of national legislation (Angola, El Salvador and Mauritius).

40. Whether or not a broader or more restricted concept of attempt is used to specify the actual action required in furtherance of the basic intent to commit the principal offence, the option of prosecuting cases of attempt could be an effective measure, especially in cases where the trafficking process covers a relatively long period and is sometimes interrupted by law enforcement authorities before completion. In addition, in view of the difficulties often faced by the authorities involved in collecting the necessary evidence to build a trafficking case, such an option could be further reinforced by criminalizing individual offences associated with trafficking in persons, thus ensuring that no element of the criminal activity concerned remained unpunished (see also the corresponding report on the implementation of the Migrants Protocol (CTOC/COP/2005/4)).

5. Criminalization of participation as an accomplice in the offence of trafficking in persons

41. Article 5, paragraph 2 (b), of the Protocol requires States parties to establish as criminal offences any acts of participating as an accomplice in the basic trafficking offence. Most States responding to the questionnaire stated that such acts were

criminalized in their domestic legal systems. One country provided a negative response because of lack of legislation (Jamaica). Responses in some cases included more specific information on the types of participation in the basic trafficking offence. However, in general terms, reference was made to the application of the general provisions of the domestic penal code or other pertinent legislation.

6. Criminalization of organizing or directing other persons to commit the offence of trafficking in persons

42. Pursuant to article 5, paragraph 2 (c), of the Protocol, States parties are obliged to criminalize any acts of organizing or directing other persons to commit the basic trafficking offence. Again, the penalization of such acts is reflected consistently in the responses received. The only cases departing from the general rule included States lacking specific legislation (Angola and Jamaica) or having in place general provisions that could be applicable (Mauritius) or, finally, States in the process of reviewing the relevant legal framework to cover this issue as well (Iceland and Peru).

43. The responses on this issue could be considered jointly with the corresponding replies of States on the issue of organizing and directing the commission of serious crimes involving an organized criminal group (art. 5, para. 1 (b), of the Convention), dealt with in the context of the report on the implementation of the Convention (CTOC/COP/2005/2). In that connection, it should be noted that the confirmed ability to establish at the domestic level the criminal liability of persons who give orders with a view to organizing or directing the commission of the principal trafficking offence but are not involved in the perpetration of the offence itself has the advantage of dealing effectively with more organized schemes or networks of trafficking involving acts of more than one person and relationships among the perpetrators without it being necessary to resort to the requirement of the involvement of an organized criminal group (see art. 34, para. 2, of the Convention). This option could also be instrumental in dealing with small groups of traffickers operating in loose connection with each other and usually specialized in different aspects of the trafficking chain, such as recruitment, transportation or management.

B. Difficulties encountered and assistance required

44. A number of States made reference to specific difficulties hampering the adoption of adequate national legislation to implement the provisions of the Protocol. Such difficulties included the lack of experienced staff and policies to accord high priority to the issue (Mauritius), the lack of experience concerning the impact of and the challenges posed by trafficking in persons (Jamaica), the existence of administrative problems and deficiencies impeding the establishment of appropriate institutional capacity (Malaysia), as well as the lack of the necessary regulations to implement the relevant legislation (the Dominican Republic). The need for assistance in providing the information required by the questionnaire was noted by the Philippines and the Republic of Moldova.

45. Some of the responses therefore stressed the need for provision of technical assistance focusing on enhancing domestic criminal justice and law enforcement capability to fight trafficking in persons. Chile, in particular, noted the importance

of such technical assistance from countries that have more experience and resources in this field, while Jamaica and Mauritius specified as a key component of potential technical assistance programmes assistance in drafting legislation both reflecting international standards and in line with domestic needs. Some States stressed the significance of training programmes for criminal justice officials, including law enforcement officers, judges, investigators and specialized psychologists (Ecuador and El Salvador). El Salvador also referred to the need to support victim protection schemes and appropriate legislative reform.

C. Technical assistance provided

46. A number of countries reported that they participated in various technical assistance programmes and projects to prevent and combat trafficking in persons, carried out either bilaterally or through international organizations. Cooperation with the Secretariat in implementing technical assistance projects focusing on trafficking in persons was reported by France, Germany and Portugal, while Canada referred to its financial support for relevant activities of the Secretariat. Portugal indicated that its national authorities had undertaken specialized technical assistance activities aimed at listing the relevant legislative needs at the national level and creating the appropriate legal framework that would facilitate application of the United Nations instruments against transnational organized crime, including the Trafficking in Persons Protocol.

47. Other countries referred to their cooperation with the Organization for Security and Cooperation in Europe (France and Germany) or international police organizations, such as the International Criminal Police Organization, the European Police Office or the Association of Southeast Asian Nations Chiefs of Police (Malaysia, Namibia, Spain and Switzerland). Participation in and support for relevant projects and programmes of the European Union (Daphne, AGIS and Phare) was reported by Germany, Greece and the United Kingdom of Great Britain and Northern Ireland. In addition, the United Kingdom reported on a separate project funded by the European Union and based on partnerships between member States.

48. Germany and the United Kingdom also noted their cooperation with other international organizations involved in the fight against trafficking in persons (the United Nations Children's Fund (UNICEF), the International Labour Organization and the International Organization for Migration). Particular reference was made by Germany to its support for a UNICEF project for the reintegration of war-affected children in Afghanistan. It also mentioned the establishment of a supra-regional sector project against trafficking in women aimed at providing assistance and advice to state institutions, as well as non-governmental and intergovernmental organizations.

49. Regional initiatives were reported by Iceland (the Nordic-Baltic Campaign against Trafficking in Women) and Namibia (the Southern African Regional Police Chiefs Cooperation Organization). South Africa pointed to its cooperation with and support for the work of the African Prosecutors Association. Tunisia mentioned its cooperation through the United Nations system with other countries, especially in the field of technical assistance, with a view to preventing and combating

trafficking in persons as well as its endeavours to that effect in the framework of the African Union and the League of Arab States.

50. Training activities reported by other countries included exchange of information (Namibia, Spain and Switzerland), training of foreign police officers (Spain), training and upgrading of equipment for border police (Germany), exchange of advice on legislation and operating methods (Namibia), organization of relevant workshops and training seminars, as well as provision of legal assistance (Greece), assistance in normative issues related to trafficking in persons (Ecuador) and various training programmes in countries of origin (Turkey). Finally, the United Kingdom reported on the establishment of a central intelligence unit in Bucharest to focus on organized immigration-related crime in Romania. New Zealand reported on its cooperation with Australia in drafting model provisions for inclusion in legislation against transnational organized crime for Pacific Island States. In that context, funding had been provided to legal drafters to work with the government agencies of those States for the drafting and adoption of relevant implementing laws.

III. Concluding remarks

51. The information provided by States in response to the questionnaire on the implementation of the Trafficking in Persons Protocol demonstrated that in most States action had been undertaken with a view to ensuring the availability of the necessary legislative arsenal to deal with the complex phenomenon of trafficking in persons. However, beyond the existence of a normative anti-trafficking framework at the national level, further work needs to be done to promote the consistency of national legislative responses with the concepts and requirements of the Protocol. The Conference of the Parties may wish to consider ways of assisting countries in reviewing or further adjusting and streamlining their legal framework to that effect. In that context, the promotion and enhancement of technical assistance activities, in particular in support of the efforts of developing countries and countries with economies in transition, to build the necessary capacity for fully and consistently incorporating the provisions of the Protocol into their domestic legal systems, should be in the forefront of future action and the relevant work and initiatives of the Secretariat in this field should be further strengthened.

52. The effectiveness of the assistance that the Conference of the Parties can provide depends to a large extent on the availability, comprehensiveness and accuracy of appropriate information on the national programmes, plans and practices, as well as the domestic legislative and administrative measures to implement the Protocol. Consequently, States that have not responded to the questionnaire are called upon to facilitate the work of the Secretariat and to provide the information required by the Conference of the Parties. States parties to the Trafficking in Persons Protocol, in particular, should recall their reporting obligations under the Convention itself (art. 32, para. 5). The efficiency of the reporting mechanism in support of the function of the Conference of the Parties can only be ensured when the information available is comprehensive and representative of as many national approaches as possible and not only a portion of them covering less than half the States parties to the Protocol.

53. As this initial review of the implementation of the provisions of the Protocol has focused primarily on the basic adaptation of national laws, in particular their criminalization components, in accordance with the requirements of the Protocol, the information already submitted by States parties will be systematized further and combined with additional material to be received at subsequent stages pursuant to the programme of work of the Conference of the Parties. It has already been decided that such material will focus on other aspects of national policies and strategies against trafficking in persons, including preventive measures and action to protect victims of trafficking. The utilization of such multifaceted information would enable the Conference of the Parties to discharge its functions in relation to the implementation of the Protocol in a more efficient manner by assisting States parties to the Protocol to promote a holistic approach to trafficking that would build on a combination of repressive measures against and effective prosecution of traffickers on the one hand and prevention, as well as protection of and assistance to victims of trafficking, on the other.

Notes

¹ The words “mutatis mutandis” mean “with such modifications as circumstances require” or “with the necessary modifications”. Provisions of the Convention that are applied to the Protocol under its article 1, paragraph 2, would consequently be modified or interpreted so as to have the same essential meaning or effect in the Protocol as in the Convention (see the interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto, note on article 1, paragraph 2, of the Trafficking in Persons Protocol, contained in A/55/383/Add.1, para. 62).

² It was the understanding of the Conference of the Parties that the questionnaire developed in accordance with guidance provided by it in its decision 1/5 (see sect. C below) would not include questions on the implementation of articles 6 and 9 of the Protocol.

³ Responses to the questionnaire on the implementation of the Trafficking in Persons Protocol were received from the following States:

(a) *States parties*: Azerbaijan, Bahrain, Belarus, Belgium, Brazil, Canada, Chile, Costa Rica, Croatia, Cyprus, Ecuador, El Salvador, Estonia, France, Jamaica, Latvia, Lithuania, Malta, Mauritius, Mexico, Myanmar, Namibia, Netherlands, New Zealand, Nigeria, Peru, Philippines, Poland, Portugal, Russian Federation, Romania, Slovakia, South Africa, Spain, Sweden, Tunisia and Turkey;

(b) *Signatories*: Austria, Czech Republic, Dominican Republic, Finland, Germany, Greece, Iceland, Republic of Moldova, Sri Lanka, Switzerland, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America;

(c) *Non-signatories*: Afghanistan, Angola, China, Honduras, Kuwait and Malaysia.

The following States parties to the Protocol had not replied to the questionnaire as at 29 July 2005: Albania, Algeria, Argentina, Armenia, Belize, Benin, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Cape Verde, Colombia, Denmark, Djibouti, Egypt, Equatorial Guinea, Gambia, Grenada, Guatemala, Guinea, Guyana, Kenya, Kyrgyzstan, Lao People’s Democratic Republic, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Mali, Mauritania, Monaco, Nicaragua, Niger, Norway, Oman, Panama, Paraguay, Rwanda, Saint Kitts and Nevis, Senegal, Serbia and Montenegro, Seychelles, Slovenia, Tajikistan, the former Yugoslav Republic of Macedonia, Turkmenistan, Ukraine, Uruguay, Venezuela (Bolivarian Republic of) and Zambia.

- ⁴ According to article 3 of the Trafficking in Persons Protocol, the offence of “trafficking in persons” is broken down into three constituent elements to be considered jointly: criminal acts (“recruitment, transportation, transfer, harbouring or receipt of persons”), the means used to commit these acts (“the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”) and the goals (forms of exploitation), including, at a minimum, “the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.
- ⁵ Expansion of the scope of protection to men and children and amendments to expand the criminal liability to persons who also act as intermediaries in the commission of the offence.
- ⁶ Focusing on increasing the effectiveness of the national criminal justice system and providing more assistance to victims of trafficking in persons, as well as reforming evidentiary and investigation rules.
- ⁷ Only New Zealand and Portugal reported otherwise.
- ⁸ Except New Zealand.
- ⁹ Except New Zealand.
- ¹⁰ Except Peru.
- ¹¹ Except Peru.
- ¹² Except Azerbaijan, Honduras, Peru and the United Republic of Tanzania.
- ¹³ Except Azerbaijan, El Salvador, Honduras, Peru and the United Republic of Tanzania.
- ¹⁴ Except Azerbaijan, Ecuador, El Salvador, Honduras, Peru and the United Republic of Tanzania.
- ¹⁵ Except Azerbaijan, El Salvador, Honduras and Peru.
- ¹⁶ Except Azerbaijan, El Salvador, Honduras and Peru.
- ¹⁷ Except Azerbaijan, El Salvador and Honduras.
- ¹⁸ Except Azerbaijan, El Salvador and Honduras.
- ¹⁹ Except Azerbaijan, Belarus, Honduras, New Zealand and Peru.
- ²⁰ Except Costa Rica, Peru, Portugal and the United Republic of Tanzania.
- ²¹ Except Iceland, New Zealand, Portugal and the United Republic of Tanzania.
- ²² Except Ecuador, Iceland, Latvia, New Zealand, Peru, Portugal, Turkey and the United Republic of Tanzania.
- ²³ Except Ecuador, France, Peru, Portugal and the United Republic of Tanzania. Costa Rica reported that the purpose of extraction of organs was stipulated only in the context of trafficking in minors, but not generally in the context of trafficking in persons. Germany indicated that trafficking in and removal of organs were dealt with in its specific legislation on transplantations.
- ²⁴ Brazil, Chile, Costa Rica, Croatia, the Dominican Republic, Ecuador, Germany, Greece, Mexico, Myanmar, Peru, Portugal, Romania and Sri Lanka.
- ²⁵ The terms “exploitation of the prostitution of others” or “other forms of sexual exploitation” are not defined in the Trafficking in Persons Protocol, which is therefore without prejudice to how States parties address prostitution in their respective domestic laws (see the interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the Transnational Organized Crime Convention and the Protocols thereto, note on article 3, subparagraph (a), of the Trafficking in Persons Protocol (A/55/383/Add.1), para. 64).
- ²⁶ Peru also reported on the criminalization of being a client of a prostitute.