



Thirteenth United Nations Congress on Crime Prevention and Criminal Justice

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Agenda item 4

**International cooperation, including at the regional level,
to combat transnational organized crime**

Report of Committee II: workshop 2

Addendum

Trafficking in persons and smuggling of migrants: successes and challenges in criminalization, in mutual legal assistance and in effective protection of witnesses and trafficking victims

Proceedings

1. At the 1st plenary meeting, on 12 April 2015, the Congress elected by acclamation Matti Joutsen (Finland) as Chair of Committee II. At its 1st meeting, on 14 April 2015, Committee II elected by acclamation Antonio Roberto Castellanos Lopez (Guatemala) as Vice-Chair and Naoki Sugano (Japan) as Rapporteur.

2. At its 1st to 3rd meetings, on 14 and 15 April 2015, Committee II held a workshop on trafficking in persons and smuggling of migrants: successes and challenges in criminalization, in mutual legal assistance and in effective protection of witnesses and trafficking victims. The European Institute for Crime Prevention and Control, affiliated with the United Nations, which is part of the United Nations crime prevention and criminal justice programme network, has assisted in the preparation and organization of the workshop. The Committee had before it the following documents:

(a) Background paper on workshop 2, on trafficking in persons and smuggling of migrants: successes and challenges in criminalization, in mutual legal assistance and in effective protection of witnesses and trafficking victims (A/CONF.222/11);

(b) Discussion guide for the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice (A/CONF.222/PM.1);

(c) Reports of the regional preparatory meetings for the Thirteenth Congress (A/CONF.222/RPM.1/1, A/CONF.222/RPM.2/1, A/CONF.222/RPM.3/1 and A/CONF.222/RPM.4/1).



3. At the 1st meeting of Committee II, on 14 April, the Chair of the Committee made an introductory statement. The high-level panel on crosscutting issues was moderated by the Chair and was led by the following panellists: Yury Fedotov (Executive Director of UNODC); John Jeffery (South Africa); Mona Rishmawi (Office of the United Nations High Commissioner for Human Rights); Bernd Hemingway (International Organization for Migration); and Madina Jarbussynova (Organization for Security and Cooperation in Europe). The technical panel on crosscutting issues was led by Ilias Chatzis (UNODC) and John Morrison (Institute for Human Rights and Business).
4. Statements were made by the Minister of Justice of Italy and the Minister of Justice of the Republic of Moldova. Statements were made by the representatives of Switzerland, Mexico, the United Kingdom, Finland, Saudi Arabia, Tunisia, Algeria, Morocco, Thailand and Azerbaijan.
5. At the 2nd meeting of Committee II, on 14 April, the Chair of the Committee made an introductory statement. The keynote address for the workshop was delivered by Maria Grazia Giammarinaro (Special Rapporteur on trafficking in persons, especially women and children). The panel on trafficking in persons was moderated by the Chair and was led by the following panellists: Maria Grazia Giammarinaro; Kristiina Kangaspunta (UNODC); Peter Van Hauwermeiren (Belgium); Darlene Pajarito (Philippines); Paul Adepelumi (African Centre for Advocacy and Human Development); and Bandana Pattanaik (Global Alliance Against Traffic in Women).
6. Statements were made by the representatives of the Sudan, Norway, the United States, Brazil, Somalia, Canada, Thailand, Mexico, Turkey, Indonesia, Japan, France, Kenya, Algeria and India. Statements were also made by the observers for the European Union and the Council of Arab Ministers of the Interior.
7. At the 3rd meeting of Committee II, on 15 April, the Chair of the Committee made an introductory statement. The panel on the smuggling of migrants was moderated by the Chair and was led by the following panellists: Michele LeVoy (Platform for International Cooperation on Undocumented Migrants); José Montemayor (United States); Adriana Lizárraga González (Mexico); and Sumbul Rizvi (Office of the United Nations High Commissioner for Refugees).
8. Statements were made by the representatives of China, Algeria, Qatar, El Salvador, the United States, Egypt, the United Republic of Tanzania, Yemen, the Russian Federation, Belgium, Norway, Kenya and the United Kingdom.

General discussion

9. The high-level panel on crosscutting issues emphasized that trafficking in persons and the smuggling of migrants were grave crimes that preyed on the vulnerable and often involved serious human rights violations. The panellists referred to the United Nations Global Plan of Action to Combat Trafficking in Persons, which recognized that poverty, unemployment, lack of socioeconomic opportunities, gender-based violence, discrimination and marginalization were some of the contributing factors that made persons vulnerable to trafficking in persons. The panellists also highlighted the fact that the movement of migrants was frequently compelled by persecution, conflict, discrimination, poverty, environmental degradation or lack of access to decent work, adequate health care,

education or housing. Panellists noted that criminal groups that were engaged in human trafficking and migrant smuggling had become more sophisticated in capitalizing on those contributing factors, entering new economic sectors, both legal and illegal, and using the Internet for various criminal purposes. The link between human trafficking, migrant smuggling and terrorist financing, as well as money-laundering, was also mentioned. The panel emphasized the need for more concerted action and strengthened cooperation at all levels, and noted that victims of trafficking should not be held liable for offences committed by them as a consequence or in the course of their being trafficked.

10. The technical panel on crosscutting issues referred to the existing strong international legal framework for tackling the crimes of trafficking in persons and smuggling of migrants. Referring to the Guiding Principles on Business and Human Rights, the panel outlined the challenges in holding legal persons, in particular businesses, liable for abuse and exploitation, whether in the country of origin or destination. The duty of States to protect, the corporate responsibility to respect human rights and the need to ensure access to remedy for victims of abuse and exploitation were mentioned.

11. During the panel on trafficking in persons, the need for a human-rights-based approach was highlighted by several panellists, as trafficked persons were often treated as instruments of criminal investigation, rather than as victims of human rights violations who were entitled to appropriate protection and remedies. The panel also discussed the challenges in implementing such an approach, which included a lack of political will, capacity, resources or information. Difficulties in identifying victims, and in convincing such victims to testify, were highlighted. Statutes of limitation and conditionality of assistance were also mentioned. Reference was made to the UNODC 2014 *Global Report on Trafficking in Persons*, and it was noted that the Trafficking in Persons Protocol had had a significant impact on criminalization, even though the number of convictions remained low.

12. It was noted that, while a majority of identified victims of trafficking were subjected to sexual exploitation, other forms of exploitation, such as trafficking for forced labour or for the purpose of organ removal, were increasingly detected. The importance of cooperation among law enforcement personnel and labour inspectors who were trained to detect cases and identify victims was highlighted.

13. In the panel on smuggling of migrants, panellists referred to the prevalence of smuggling along migratory routes and the absence of regular migration channels, which, in a world of increased armed conflicts and protracted refugee situations, led to the smuggling of migrants. One panellist mentioned that, owing to increased border controls and a lack of safe channels for migration, it was now the service providers for irregular migration who facilitated the crossing of borders, without any regulation or protection for those who used their services. Another panellist concluded that reducing the irregularity of such migration required fairer and more flexible migration channels, improved legal and administrative practices and access to justice, as well as an opportunity to regularize the status of such migrants. The needs of migrant children, including unaccompanied children, including adolescents, should be addressed comprehensively and with due consideration for the protection of the best interests of the child. Panellists shared case examples of cooperation in dismantling organized criminal groups involved in the smuggling of migrants, which posed a threat to national and public safety and created

humanitarian crises. The panel elaborated on the types of groups involved in such smuggling and the various roles within such groups. Examples of elements of violence used by such groups, such as hostage-taking, kidnapping, extortion, and physical and sexual assault, were discussed. It was noted that the crime was often linked to identity theft, document and benefit fraud, trafficking in firearms and drugs, money-laundering and trafficking in persons.

14. Several speakers referred to the importance of shared responsibility in tackling the issues of trafficking in persons and smuggling of migrants. Speakers stressed the importance of cooperation among all relevant stakeholders, including Member States, United Nations entities, non-governmental organizations, civil society and faith-based groups, in addressing trafficking in persons and smuggling of migrants.

15. Many speakers referred to recent legislative and policy action and other efforts taken at the national level to address trafficking in persons and the smuggling of migrants. The need to promote the ratification and implementation of, and the compliance of national legislation with, the Organized Crime Convention and the Trafficking in Persons and Smuggling of Migrants Protocols was emphasized by several speakers. In that connection, there was a need to continue to work on clarifying the relevant concepts. It was noted that the delicate balance between article 5 and article 6, paragraph 4, of the Smuggling of Migrants Protocol should be taken into account and maintained.

16. The importance of the criminal liability of legal persons was highlighted by several speakers, as were the steps taken by Governments to ensure compliance by private businesses with existing laws and regulations.

17. Several speakers emphasized the need for prevention activities, such as awareness-raising campaigns. The challenges relating to the identification of victims of trafficking, including challenges in determining the credibility of self-identified victims, were also emphasized.

18. The importance of the use of special investigative techniques, financial investigations and the sharing of intelligence both among national agencies and at the bilateral, regional and international levels was also emphasized.

Conclusions

19. The conclusions of the discussions, as summarized by the Chair, were as follows:

(a) A comprehensive, evidence-based and multidisciplinary response to combat the two distinct crimes of trafficking in persons and smuggling of migrants is needed. Such a response includes addressing the root causes of these crimes, including by creating more economic opportunities in countries of origin; promoting fair and ethical recruitment practices and the responsibility of businesses to act with due diligence and respect for human rights; raising awareness in countries of origin, transit and destination; opening more channels for legal migration and resettlement; and creating labour mobility schemes, especially for refugees. The ongoing visa dialogues in terms of law enforcement and other measures to be implemented in order to lift visa obligations for short-term stays are important in that regard;

(b) Increased efforts are needed to identify victims of trafficking; to conduct search-and-rescue operations to save smuggled migrants; to provide appropriate

protection measures; to fight human traffickers and migrant smugglers, including through financial investigations, confiscation of proceeds of crime and international cooperation; and to simultaneously address demand, including for cheap, unregulated and unprotected labour. Such a comprehensive response should be rights-based, as well as gender- and age- sensitive, and would ideally include feedback from trafficked persons and smuggled migrants;

(c) There should be comprehensive policies and programmes in place that incorporate the principle of due diligence, in order to effectively combat trafficking in persons and smuggling of migrants, in line with relevant international commitments, for example those under the Trafficking in Persons and Smuggling of Migrants Protocols and other relevant instruments of international law. Effective cooperation and coordination of efforts at the national, bilateral, regional and international levels for responding to these crimes should be encouraged;

(d) Legislation against the two distinct crimes of trafficking in persons and smuggling of migrants should be developed or strengthened to ensure that all forms of trafficking in persons and smuggling of migrants are criminalized. Such legislation should also ensure that prosecution efforts are targeted at dismantling the criminal groups and other offenders behind the smuggling of migrants and trafficking in persons, as well as protect the rights of victims of trafficking and of smuggled migrants and ensure that all victims of crime have access to justice, recourse and remedies;

(e) The root causes of trafficking in persons and smuggling of migrants should be addressed and prevention efforts strengthened, including through awareness-raising, in countries of origin, transit and destination. Demand that contributes to trafficking in persons should be discouraged. In addressing the root causes of trafficking in persons and smuggling of migrants, the nexus between crime, persecution, conflict, discrimination, poverty, environmental degradation and lack of access to decent work, adequate health care, education or housing should be recognized;

(f) Multidisciplinary partnerships and cooperation should be facilitated, not only among criminal justice agencies, but also with other relevant actors, such as social and labour authorities, trade unions, the private sector and civil society organizations, to ensure effective measures relating to prevention, protection and prosecution;

(g) Prevention of trafficking in persons, particularly for the purpose of labour exploitation, and of abuse of migrant workers should be addressed through enhancing partnerships with the private sector, including through the implementation of the Guiding Principles on Business and Human Rights. In that context, standards for contractors and subcontractors designed to prevent exploitation and to uphold the rights of workers should be set, including in public procurement.