



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, 30 May-1 June 2012

Draft report

I. Introduction

1. In its resolution 5/3, entitled “Implementation of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime”, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime welcomed the outcome of the consultations of Government experts held during its fifth session and decided to establish an open-ended intergovernmental interim working group, in accordance with article 32, paragraph 3, of the United Nations Convention against Transnational Organized Crime and rule 2, paragraph 2, of the rules of procedure for the Conference, to be chaired by a member of the Bureau, to advise and assist the Conference in the implementation of its mandate with regard to the Smuggling of Migrants Protocol.
2. The Conference also decided that the open-ended intergovernmental interim working group on the smuggling of migrants should hold consultations on, inter alia, experiences and practices on the implementation of the Smuggling of Migrants Protocol.

II. Recommendations

3. At its first session held from 30 May to 1 June, the Working Group adopted the recommendations presented below:

A. Criminalization, investigation and prosecution

4. States that have not yet done so should be urged to consider ratifying or acceding to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.



5. States parties should review and strengthen their criminal legislation and introduce the criminal offences envisaged in the Smuggling of Migrants Protocol and the Organized Crime Convention, including appropriate sanctions that are commensurate with the nature and gravity of the offence.
6. Although the smuggling of migrants and trafficking in persons share common features, State parties should consider that they are distinct crimes, which require separate legal, operational and policy responses.
7. States parties may wish to stress the importance of specialized training to law enforcement and judicial officials and call upon UNODC to continue providing technical assistance to strengthen the capacity of States parties to criminalize, investigate and prosecute the smuggling of migrants.
8. To improve understanding of the criminalization of the smuggling of migrants and enhance criminal justice responses, States parties should collect and share relevant information in this regard, including through the use of existing international and regional databases. This information could inter alia include data on organized crime groups involved in the smuggling of migrants.
9. States parties may wish to request that UNODC develop a global report on the smuggling of migrants, with the view to raising awareness inter alia on the need to criminalize and successfully prosecute the perpetrators of this crime.
10. States should request UNODC to collect information and provide technical assistance with regard to the identification of potential links between the smuggling of migrants and corruption, money-laundering and organized crime.
11. States parties may wish to consider making smuggled migrants eligible for local witness protection programmes in order to secure their cooperation and testimony and facilitate investigations, prosecutions and convictions of criminals.
12. State parties may wish to consider including in their policies and practices, mechanisms that would allow smuggled migrants to assist in criminal investigations and prosecutions 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.
13. State parties may wish to consider raising awareness of the penalties for the offence of the smuggling of migrants, especially those committed under aggravating circumstances, in order to deter others from committing this offence.
14. In criminalizing the smuggling of migrants, States parties may wish to consider establishing as aggravating circumstances, as a minimum those listed in Article 6 of the Protocol.
15. In prosecuting migrant smuggling States parties may wish to integrate financial investigations for tracing, freezing and confiscating the proceeds acquired through this crime.
16. In using special investigating techniques in smuggling of migrant cases, States parties should take into account the safety of persons who are the objects of this crime.
17. The criminalization of smuggling of migrants and identity and travel document fraud is essential to dismantling organized criminal groups involved in the

smuggling of migrants. States parties could consider strengthening the security of identity and travel documents through the replacement of all manually read documents by biometric documents and strengthen document examination capacity.

18. 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.

19. States parties should strengthen international judicial cooperation mechanisms including mutual legal assistance and extradition as well as regional partnerships.

20. State parties should evaluate the use of new technologies, especially internet-based, in the organization and commission of the offences covered by the Smuggling of Migrants Protocol.

B. Protection and assistance

21. State parties should promote the respect of the fundamental human rights of migrants irrespective of their legal status, by means of inter alia public awareness raising campaigns and training of criminal justice practitioners.

22. States parties should implement legislative and administrative measures to protect migrants from violence, discrimination, torture, inhuman and degrading treatment, as well as violation of their basic rights, and provide migrants who have been victims of crime with effective access to justice.

23. States parties may wish to consider disseminating information targeting migrants who have been or may become objects of smuggling in order to increase their awareness of the risks involved. They may also consider setting up hotlines accessible to smuggled migrants to identify violation of their rights and refer them to the appropriate services to provide for their protection.

24. States parties may wish to consider involving their consular and diplomatic representations abroad in enhancing protection of and assistance to migrants who have been the object of smuggling.

25. States parties should give special attention to dangers to the life and safety of migrants who are smuggled at sea, and prioritize the preservation of life and safety upon detection.

26. States parties should address the special needs of vulnerable categories of migrants who have been smuggled including, inter alia, pregnant women, women with children and unaccompanied minors, as well as take into account the international protection framework for refugees and asylum seekers.

27. State parties should consider involving the civil society in the response to migrant smuggling and developing communication channels between authorities involved in the detection, investigation and prosecution of smuggling of migrants and service providers who could assist in the provision of assistance to smuggled migrants.

28. States parties should consider informing migrants of their rights, including the right to appeal and should, to the extent possible, prioritize voluntary returns.

C. Prevention

29. 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 other measures relating to root causes.

30. States parties should consider criminalizing the smuggling of migrants, establishing heavy penalties for perpetrators of this crime, seize criminal assets as a means of deterrence for criminals.

31. In reinforcing document integrity, States parties should bear in mind that smuggling criminal networks also evade these measures by submitting fraudulent passport and visa applications so that measures are also put in place to scrutinize such applications.

32. States parties should strengthen their capacity to produce secure identity or travel documents and to detect fraudulent documents. They may wish to consider requesting technical assistance from other States parties, regional or international organizations to this effect.

33. States parties should develop public information campaigns which could involve the media and Internet-based social networks in order to raise awareness on the adverse effects of the smuggling of migrants and to warn persons vulnerable to being smuggled, especially the youth and their families, about the dangers involved.

34. States parties may wish to consider raising the awareness of transport companies, and especially airline companies, to the risks associated with document fraud. They may also wish to provide for penalties for companies which do not comply with their obligation to control the documents of passengers traveling across international borders.

35. 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 awareness training programmes targeted to relevant actors.

36. States parties are encouraged to use existing operational databases such as INTERPOL databases to exchange information, including that on suspected offenders and lost or stolen documents.

37. States are encouraged to consider establishing data collection and analysis centres which could assist in developing evidence-based knowledge and measures to prevent and suppress the smuggling of migrants.

38. States parties could 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 this crime.

39. In order to address root causes of migration, States parties are encouraged to engage in regional and international dialogues on migration and development, such

as the Global Forum on Migration and Development. To complement these efforts, international organizations should also make use of existing inter-agency forums addressing these issues, such as the Global Migration Group.

40. States parties may wish to consider reducing push and pull factors for migration, including through opportunities for regular migration and addressing development needs.

III. Organization of the meeting

A. Opening of the meeting

41. The first session of the open-ended intergovernmental interim working group on the smuggling of migrants of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the Protocols thereto was held in Vienna from 30 May to 1 June 2012. Six meetings were held during the session.

42. The meeting was opened by Erasmo Lara Cabrera (Mexico), who chaired the 1st and 2nd meetings of the Working Group. The Chair of the Working Group Eugenio Curia (Argentina) chaired the 3rd, 4th, 5th and 6th meetings. Introductory statements were made by the Secretariat under agenda items 2 to 5.

43. At the opening of the session, statements were made by the representatives of El Salvador (on behalf of the States Members of the United Nations that are members of the Group of 77 and China), Ecuador (on behalf of the Group of Latin American and Caribbean States) and Canada. A statement was also made by the Secretariat.

44. Under agenda items 2 to 5, with the Chair presiding, the discussion was led by the following panellists: Michael J. Surgalla Jr. (United States of America), Alfis Suhaili (Indonesia), Esteban B. Conejos Jr. (Philippines), Emmanuel Guebara Isla (Mexico), Scott Hatfield (United States of America).

45. Statements were made by representatives of the following States parties to the Smuggling of Migrants Protocol: France, Philippines, Mexico, Canada, Azerbaijan, Australia, United States of America, Russian Federation, Netherlands, Belgium, Guatemala, New Zealand, Turkey, Argentina, Tunisia, El Salvador, Algeria, Spain, Saudi Arabia, Romania, Ecuador, Nigeria, Portugal, Switzerland.

46. The observers for the signatory States of Japan and Thailand made a statement.

47. The Working Group also heard statements by the observer for the International Organization for Migration.

B. Adoption of the agenda and organization of work

48. At its first meeting, on 30 May 2012, the Working Group adopted by consensus its provisional agenda and organization of work:

1. Organizational matters:
 - (a) Opening of the meeting;

- (b) Adoption of the agenda and organization of work.
- 2. Challenges and good practices in the criminalization, investigation and prosecution of the smuggling of migrants.
- 3. Challenges and good practices in the protection of and assistance to smuggled migrants.
- 4. Challenges and good practices in the prevention of the smuggling of migrants.
- 5. Challenges and good practices concerning cooperation and coordination, including the sharing of intelligence and other information, in response to the smuggling of migrants.
- 6. Other matters.
- 7. Adoption of the report.

C. Attendance

49. The following States parties to the Smuggling of Migrants Protocol, supplementing the United Nations Convention against Transnational Organized Crime were represented in the Working Group: Algeria, Australia, Austria, Azerbaijan, Belgium, Brazil, Burkina Faso, Canada, Chile, Costa Rica, Cyprus, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Guatemala, Hungary, Indonesia, Kenya, Lebanon, Lithuania, Mexico, Namibia, Netherlands, New Zealand, Nicaragua, Nigeria, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, Saudi Arabia, Slovakia, South Africa, Spain, Sweden, Switzerland, Syrian Arab Republic, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Venezuela (Bolivarian Republic of).

50. The European Union, a regional economic integration organization that is a party to the Convention, was represented at the meeting.

51. The following States signatories to the Convention were represented by observers: Bolivia (Plurinational State of), Czech Republic, Japan, Luxembourg, Republic of Korea, Sri Lanka, Thailand.

52. The following States that are not parties or signatories to the Smuggling of Migrants Protocol were represented by observers: China, Colombia, Côte d'Ivoire, Cuba, Iran (Islamic Republic of), Malaysia, Morocco, Pakistan, Qatar, Sudan, Yemen, Zimbabwe.

53. Palestine, an entity having received a standing invitation from the General Assembly to participate as an observer in the sessions and work of all international conferences convened under its auspices, was represented.

54. The Office of the United Nations High Commissioner for Refugees was represented as observer.

55. The International Organization for Migration, an intergovernmental organization, was represented as observer.

56. A list of participants is contained in document CTOC/COP/WG.7/2012/INF.1/Rev.1.

D. Documentation

57. The documents before the working group are listed in the annex to the present report.

Annex**List of documents before the working group on the smuggling of migrants**

<i>Document number</i>	<i>Agenda item</i>	<i>Title or description</i>
CTOC/COP/WG.7/2012/1	1 (b)	Provisional agenda and annotations
CTOC/COP/WG.7/2012/2	2	Challenges and good practices in the criminalization, investigation and prosecution of the smuggling of migrants
CTOC/COP/WG.7/2012/3	3	Challenges and good practices in the protection of and assistance to smuggled migrants
CTOC/COP/WG.7/2012/4	4	Challenges and good practices in the prevention of the smuggling of migrants
CTOC/COP/WG.7/2012/5	5	Challenges and good practices concerning cooperation and coordination, including the sharing of intelligence and other information, in response to the smuggling of migrants
CTOC/COP/WG.7/2012/CRP.1	5	Non-paper by Mexico: Conclusiones de la Conferencia Internacional sobre el Tráfico Ilícito de Migrantes: Retos y avances en la implementación del Protocolo contra el Tráfico Ilícito de Migrantes por Tierra, Mar y Aire, Ciudad de México, 16 al 18 de abril de 2012