



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

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## Sixth session

Vienna, 15-19 October 2012

Agenda item 2 (c)

**Review of the implementation of the United Nations  
Convention against Transnational Organized Crime and  
the Protocols thereto: Protocol against the Smuggling of  
Migrants by Land, Sea and Air**

**Canada, El Salvador, Indonesia, Norway and United States of America: revised  
draft resolution**

## **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,*

*Recalling* article 32 of the United Nations Convention against Transnational  
Organized Crime,<sup>1</sup> in which the Conference of the Parties to the United Nations  
Convention against Transnational Organized Crime was established to improve the  
capacity of States parties to combat transnational organized crime and to promote  
and review the implementation of the Convention and the Protocols thereto,  
including the Protocol against the Smuggling of Migrants by Land, Sea and Air,  
supplementing the United Nations Convention against Transnational Organized  
Crime,<sup>2</sup>

*Also recalling* its resolution 5/3 of 22 October 2010,

*Reaffirming* the importance of the Smuggling of Migrants Protocol as the  
primary international legal instrument to combat the smuggling of migrants and  
related conduct, as defined in the Protocol,

*Underscoring* the supplementary relationship of the Smuggling of Migrants  
Protocol to the Convention and the fact that effective implementation of the

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\* The present document has not been edited.

<sup>1</sup> United Nations, *Treaty Series*, vol. 2225, No. 39574.

<sup>2</sup> *Ibid.*, vol. 2241, No. 39574.



Protocol relies in part on States parties implementing their legal obligations under the Convention,

*Acknowledging* the importance of the recent work by regional initiatives to combat the smuggling of migrants, including the Fourth Bali Regional Ministerial Conference on People Smuggling, Trafficking in Persons and Related Transnational Crime, held in Bali, Indonesia, in March 2011,

*Welcoming* the conclusions of the international conference entitled “Migrant smuggling: challenges and progress in implementing the Protocol against the Smuggling of Migrants by Land, Sea and Air”, held in Mexico City in April 2012,

*Recalling* that in its resolution 5/3, the Conference established an open-ended intergovernmental interim working group on the smuggling of migrants and that the working group, inter alia, should discuss experiences and practices with regard to the implementation of the Smuggling of Migrants Protocol,

1. *Urges* Member States that have not yet done so 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;<sup>3</sup>

2. *Calls upon* States parties to 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 United Nations Convention against Transnational Organized Crime,<sup>4</sup> including by introducing appropriate sanctions commensurate with the nature and gravity of the offence;

3. *Urges* States parties to adopt and implement appropriate measures, including legislation, if necessary, to protect smuggled migrants from violence, discrimination, torture or other cruel, inhuman and degrading treatment or punishment, as well as the violation of their rights, and to provide smuggled migrants who have been victims of violent crimes with effective access to justice and legal assistance;

4. *Encourages* States parties, upon request, to continue providing technical assistance, and support the efforts of international partners, including the United Nations Office on Drugs and Crime, that provide technical assistance aimed at strengthening 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;

5. *Requests* the United Nations Office on Drugs and Crime to continue its technical assistance and capacity-building efforts, in coordination and cooperation with bilateral assistance providers and other relevant international organizations that assist States parties, upon request, in implementing the Smuggling of Migrants Protocol, and also assist States, upon request, in ratifying or acceding to the Smuggling of Migrants Protocol;

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<sup>3</sup> Ibid.

<sup>4</sup> Ibid., vol. 2225, No. 39574.

6. *Reminds* States parties that although the smuggling of migrants and trafficking in persons may, in some cases, share some common features, States parties need to recognize, consistent with the Smuggling of Migrants Protocol and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime,<sup>5</sup> that they are distinct crimes requiring separate legal, operational and policy responses;

7. *Welcomes* the report on the meeting of the Working Group on the Smuggling of Migrants held in Vienna from 30 May to 1 June 2012,<sup>6</sup> and encourages States parties to implement, where necessary, the recommendations contained therein;

8. *Urges* States parties to intensify, as appropriate, their efforts at the national and international levels with regard to cooperation in order to provide specialized training to law enforcement, prosecutorial and judicial officials, such as training for those responsible for gathering evidence from the point of interception of smuggled migrants;

9. *Also urges* States parties:

(a) To consider raising awareness of the penalties for the offence of the smuggling of migrants, especially offences committed under aggravating circumstances, so that those penalties may better serve as deterrents;

(b) To consider establishing aggravating circumstances to the relevant offences, in accordance with article 6, paragraph 1, of the Smuggling of Migrants Protocol, including those aggravating circumstances contained in article 6, paragraph 3, of the Smuggling of Migrants Protocol, specifically, circumstances that endanger or are likely to endanger the lives or safety of the migrants concerned or that entail inhuman or degrading treatment of such migrants;

(c) To ensure, where appropriate, that in investigating and prosecuting the smuggling of migrants, the undertaking of concurrent financial investigations is considered with a view to tracing, freezing and confiscating proceeds acquired through such crime, and to consider the smuggling of migrants to be a predicate offence of money-laundering;

10. *Further urges* States parties to respect the fundamental human rights of smuggled migrants, irrespective of their migration status, nationality, gender, ethnicity, religion or age, taking into account the special needs of women and children;

11. *Invites* States parties to exchange their views and to share information and good practices on the measures taken to protect the human rights of smuggled migrants;

12. *Urges* States parties, as appropriate, to strengthen the security of their identity and travel documents and their capacity to detect fraudulent documents;

13. *Also urges* States parties to use, to the fullest extent possible, mutual legal assistance and other forms of cooperation and coordination to combat the

<sup>5</sup> Ibid., vol. 2237, No. 39574.

<sup>6</sup> CTOC/COP/WG.7/2012/6.

smuggling of migrants at the national, regional and international levels, and encourages States parties to use 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;

14. *Further urges* States parties to 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 and develop training programmes for relevant actors;

15. *Encourages* States parties to consider establishing, in countries of origin, transit and destination, programmes for returning smuggled migrants, including repatriation to the countries of origin, with the assistance of relevant international organizations and civil society, where appropriate, in line with the recommendations contained in paragraphs 52 and 53 of the report of the Working Group on the Smuggling of Migrants;

16. *Also encourages* States parties to use existing operational databases, such as the databases of the International Criminal Police Organization (INTERPOL), to exchange information, including information on persons convicted of or suspected of committing any of the crimes set forth in article 6 of the Smuggling of Migrants Protocol and information on lost or stolen documents, in accordance with domestic law;

17. *Further encourages* States parties to reinforce multi-agency cooperation and coordination, such as by considering the establishment of multi-agency centres, for the purpose of data collection, strategic and tactical analysis and information-sharing in order to detect, prevent and suppress the smuggling of migrants;

18. *Encourages* States parties to exchange information on best practices to promote 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, in order to implement article 7 of the Smuggling of Migrants Protocol;

19. *Decides* that the Working Group on the Smuggling of Migrants should continue to perform the functions set forth in Conference resolution 5/3 of 22 October 2010;

20. *Also decides* that the Working Group should hold at least one intersessional meeting prior to the seventh session of the Conference, and notes in that regard the Working Group's recommendation that the next meeting focus on good practices in special investigative techniques and the establishment of multi-agency centres;

21. *Requests* the Secretariat to continue to assist the Working Group in the performance of its functions, and to submit a report to the Conference at its seventh session on the implementation of the present resolution;

22. *Invites* Member States and other donors to provide extrabudgetary resources for these purposes in accordance with the rules and procedures of the United Nations.