



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

Distr.: General  
16 August 2006

Original: English

Third session

Vienna, 9-18 October 2006

Item 3 of the provisional agenda\*

**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: information  
received from States for the second reporting cycle**

**Analytical report of the Secretariat**

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\* CTOC/COP/2006/1.



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## **I. Introduction**

### **A. Mandate of the Conference of the Parties**

1. In its decision 2/3, adopted at its second session, held in Vienna from 10 to 21 October 2005, the Conference of the Parties decided that its programme of work in reviewing 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 (hereinafter referred to as the “Trafficking in Persons Protocol” and the “Organized Crime Convention” respectively), would include the following areas:

(a) Consideration of matters related to assistance to and protection of victims of trafficking in persons (article 6) and status of such victims in receiving States (article 7);

(b) Consideration of matters related to repatriation of victims of trafficking in persons (article 8);

(c) Consideration of matters related to border measures (article 11), security and control of documents (article 12) and legitimacy and validity of documents (article 13);

(d) Consideration of the value of developing, in cooperation with the International Labour Organization (ILO), indicators for forced labour.

2. In the same decision, the Conference of the Parties requested the Secretariat to collect information from States parties and signatories to the Trafficking in Persons Protocol, in the context of the above programme of work, using for that purpose a questionnaire developed by the Secretariat and approved by the Conference of the Parties at its second session; urged 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 at its third session.

### **B. Reporting process**

3. A draft questionnaire on the implementation of the Trafficking in Persons Protocol was brought to the attention of the Conference of the Parties for review and comments at its second session (CTOC/COP/2005/L.8). The final text of the questionnaire, as approved by the Conference in accordance with its above-mentioned programme of work, was disseminated to States parties and signatories to the Protocol under cover of a note verbale dated 10 February 2006, with a view to obtaining the required information in accordance with decision 2/3.

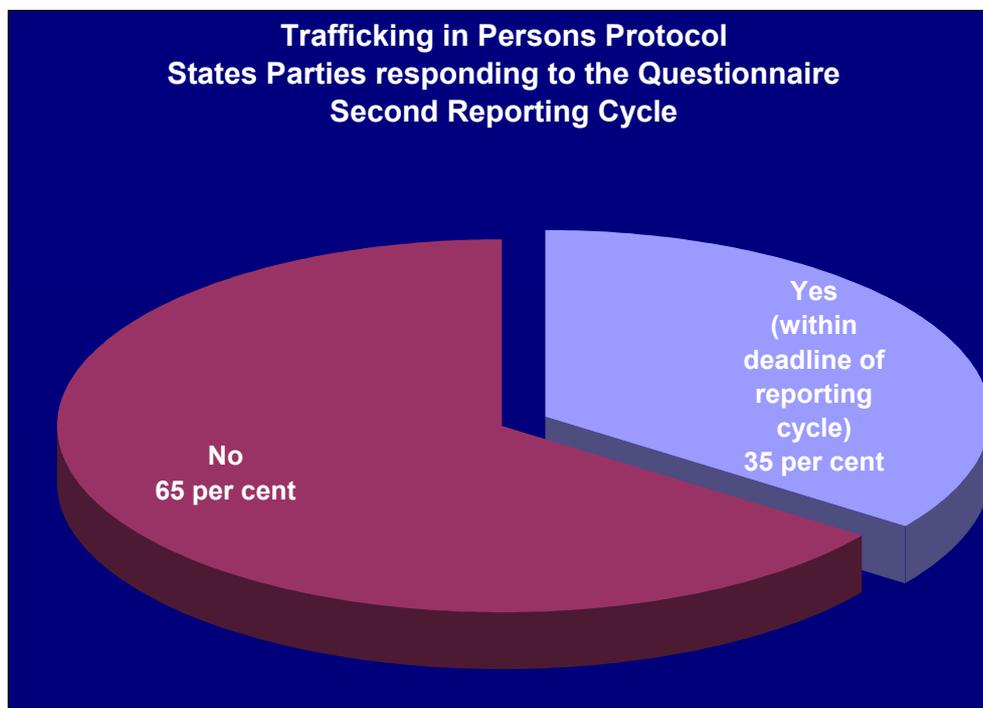
4. Following the practice of the first reporting cycle of the Conference of the Parties, in 2005, the Secretariat also sent the questionnaire to non-signatory States with a view to encouraging them to participate in the information-gathering system of the Conference and, thus, gain experience and knowledge on how States parties to the Trafficking in Persons Protocol had adjusted their legal and institutional framework in order to address the issues under discussion.

5. By means of an information circular dated 4 May 2006, the Secretariat reminded States parties to the Trafficking in Persons Protocol of their obligation to provide information and invited signatories to do likewise at their earliest convenience, but not later than 20 May 2006.

6. As at 24 July 2006, the Secretariat had received responses from 43 States, of which 35 were parties to the Trafficking in Persons Protocol, 5 were signatories and 3 non-signatories. Many of the responding States also provided copies of their relevant legislation. As at the same date, the Protocol had received 101 ratifications. Thus, as the figure below illustrates, only 35 per cent of States parties had responded to the questionnaire.<sup>1</sup>

Figure

**Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime: States parties responding to the questionnaire for the second reporting cycle**



7. The breakdown by regional group of Member States of the United Nations that had responded to the questionnaire on the implementation of the Trafficking in Persons Protocol by 24 July 2006, as well as Member States that had not submitted replies, is provided in tables contained in document CTOC/COP/2006/13.

### C. Scope and structure of the report

8. The present analytical report contains a summary and an analysis of national replies and highlights the progress made towards meeting the requirements set out in the Trafficking in Persons Protocol and the difficulties that States are, at times, facing in implementing its provisions.

9. The structure of the report follows the guidance given by the Conference of the Parties in its decision 2/3. Thus, the report contains information on legislative, administrative or other practical measures taken at the national level to assist and protect victims of trafficking in persons. It also covers issues related to the repatriation of victims of trafficking in persons and their status in receiving States and further provides an overview of national practices geared towards strengthening border measures and guaranteeing the security and control, as well as legitimacy and validity, of documents suspected of being used for the purpose of trafficking in persons.

10. As mentioned above, the value of developing, in cooperation with ILO,<sup>2</sup> indicators for forced labour was the fourth item included in the programme of work of the Conference of the Parties for further consideration at its third session. However, it was not addressed in the questionnaire and therefore is not reflected in the present report. It was the understanding of the Conference that it would be important to build upon the work accomplished during its first reporting cycle, continuing to gather information on the legislative and administrative framework in place at the national level to ensure compliance with the relevant provisions of the Trafficking in Persons Protocol that were under consideration. Moreover, the fact that the third session of the Conference would be the last one to be held on an annual basis was considered as an additional factor for increasing efforts to receive comprehensive information on “normative” aspects first, before proceeding in future sessions with the gathering of information on implementing policies and strategies or on other technical aspects as, for example, the main elements and characteristics for identifying forced labour in practice. Nevertheless, there were speakers in the relevant discussions at the second session of the Conference of the Parties who argued that further consideration should be given, in particular, to trafficking for the purpose of labour exploitation and that this would include identification of indicators of various forms of labour exploitation (see CTOC/COP/2005/8, para. 61). In that respect, it was deemed appropriate to include that aspect in the programme of work of the Conference, with a view to enabling an exchange of views on the issue and building up a comprehensive understanding of a wide range of factors affecting possible victims and relating to forced labour situations. Such an exchange of views might also be useful for the discussions in the working group on technical assistance, established by the Conference in its decision 2/6, which will meet for the first time at its third session.

11. The present report does not purport to be comprehensive or complete, as it reflects the situation in approximately one third of the States parties to the Protocol.

## **II. Overview of reported national action for the implementation of the Protocol provisions under consideration**

### **A. Matters related to assistance to and protection of victims of trafficking in persons and the status of such victims in receiving States**

#### **1. Protection of the identity and/or privacy of victims**

12. Article 6 of the Trafficking in Persons Protocol provides for a series of protective measures for victims of trafficking in persons. Paragraph 1, in particular, requires States parties to the Protocol to take measures to protect the privacy and identity of the victims. Almost all States responding to the questionnaire confirmed that such measures were in place in their domestic legal system, while some made reference to the general provisions of their legislation on victim protection. Ecuador, Portugal and Zimbabwe reported that procedures for amending and updating national legislation on that issue were pending.

13. Most States stated that they had provisions for protecting the identity of victims and they specified relevant measures in that regard. Almost all responding States highlighted the protection of the identity of minors and some reported extension of the protection to relatives of victims of trafficking in persons. However, it was also reported that the scope, level or degree of protection granted to victims and their relatives were subject to whether or not such persons participated in criminal proceedings related to trafficking in persons as witnesses (Bulgaria).

14. As far as the right to privacy is concerned, almost half of the responding States reported the existence of measures aimed at ensuring that proceedings related to trafficking in persons were kept confidential (closed hearings, testimony by videolink and judicial discretion to withhold information from the media or exclude members of the public or representatives of the media from the proceedings).

15. The majority of the States that provided responses to the questionnaire also indicated that constitutional or other basic legal requirements existed in their legal system to ensure the protection of the basic rights of the offender. In that context, a number of States referred to their constitutional framework or other domestic legislation or even guidelines and practices for Government agencies, to safeguard and balance the rights of the accused with the rights of the media to free expression and the rights of the victim (Canada and New Zealand) and in particular to ensure the right to disclose any information that might be exculpatory or assist the defence (Italy) or the right of adequate legal representation (Slovakia).

16. The Conference of the Parties may wish to review the implementation of article 6, paragraph 1, of the Protocol (and the related para. 5; see further discussion below) at the national level bearing in mind the corresponding responses to the Organized Crime Convention questionnaire, in particular the part on witness protection. That part of the Convention questionnaire focused on obtaining information on pertinent measures that allowed, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of witnesses, their relatives and other persons close to them. The

questionnaire also elicited information on evidentiary rules that permitted the testimony of such persons to be given in a manner that ensured their safety (see art. 24, para. 2, of the Convention, as well as the related information contained in CTOC/COP/2006/2, paras. 68 and 69).

## **2. Access to information and participation of victims in proceedings**

17. States were further asked to report on national measures to implement the mandatory requirement of providing information on relevant court and administrative proceedings to victims of trafficking in persons (art. 6, para. 2 (a), of the Trafficking in Persons Protocol), as well as an opportunity to present their views and concerns in such proceedings (art. 6, para. 2 (b), of the Protocol). The vast majority of responding States stated that such information was provided to victims and only a few negative responses were provided (Morocco, Portugal and Zimbabwe). Portugal explained that the revision of the relevant legislation on the issue was pending. In particular, most States reported that mechanisms were in place to inform victims who were witnesses of their rights and to keep them informed of the status of proceedings. Translation services were also reported, coupled with the provision of information to victims of trafficking in persons about anti-trafficking programmes for victims of severe forms of trafficking (United States of America). However, in general terms, no information was made available on whether that was also the case when victims were not witnesses in the criminal proceedings related to trafficking in persons. A few States (Bulgaria and Italy) submitted details about specific organizations and centres providing information assistance to victims (both Government agencies and non-governmental organizations). In addition, a number of States reported that they enabled victims to participate as parties in the proceedings and present their views (Canada, Czech Republic, Germany and Sweden).

18. Bearing in mind that article 25, paragraph 3, of the Organized Crime Convention also requires that victims should be given an opportunity to express views and concerns during relevant criminal proceedings, the national replies received on this particular victims' right could be combined with the corresponding responses on the Organized Crime Convention provision, as reflected in the report on the implementation of the Convention (see CTOC/COP/2006/2, para. 72).

19. The Conference of the Parties may wish to consider this information as a starting point for further discussion on the need and the means to promote empowerment measures that would enable victims of trafficking in persons to participate actively in the related proceedings against offenders and enforce their rights. Such empowerment measures should be non-discriminatory and should include and start from the provision of assistance to victims, irrespective of their willingness to participate in criminal proceedings against offenders. In this connection, consideration may also be given to the obstacles that many victims encounter in seeking access to information and taking part in such proceedings, owing to factors such as legal status, culture, race, language, resources, education, age or citizenship. In addition, emphasis may also be given to the importance of providing free translation and free legal assistance and representation to victims of trafficking, including through enhancing the effectiveness of legal aid mechanisms for them.

### 3. Recovery measures

20. In the light of article 6, paragraph 3, of the Trafficking in Persons Protocol, which contains a list of support measures intended to reduce the suffering and harm caused to victims of trafficking in persons and to assist them in their recovery and rehabilitation, most of the States reported measures to enable recovery of victims of criminal offences generally. Three States did not provide information at all (Peru, Poland and Turkmenistan). A number of States (Bulgaria, Croatia, Czech Republic, Finland, Indonesia, Italy, Myanmar and Slovenia) reported recovery measures for victims of trafficking in particular, usually through national action plans or legislation and implementing decrees. One State pointed out that a victim of a severe form of trafficking in persons was eligible for benefits and services under any federal or State programme to the same extent as an alien who was admitted as a refugee (United States). In most cases, the competent Government authorities involved in the execution of the relevant parts of action plans were specified and mainly included the Ministries of Health, Education or Social Services. Some responding States reported that they were in the process of developing action plans (New Zealand and Thailand).

21. With regard to specific measures to enable recovery, a number of States reported provision of temporary shelters, reception centres or other appropriate housing (Algeria, Bulgaria, Croatia, Czech Republic, Estonia, Indonesia, Romania, South Africa, Thailand and United States). Other States referred to counselling and information assistance to victims, including specific assistance hotlines with telephone interpretation service (Czech Republic, Guatemala, South Africa and United States) and State legal aid (Estonia). In addition, those States which provided medical and psychological assistance usually did so within the ambit of the general health care services. Most States further underscored that they offered employment, educational and training opportunities to victims without, however, providing further detail. One State noted that no resources were available for employment or training (South Africa). Finally, the majority of the responding States confirmed the cooperation of the competent national authorities with non-governmental organizations and other elements of civil society to support mechanisms for the recovery of victims of trafficking in persons. A number of them provided specific examples in this regard (Bulgaria, El Salvador, Indonesia, Myanmar, Slovenia and South Africa). In one case, a non-governmental organization was tasked with implementing an inter-ministerial action plan on trafficking financed by the Government (Slovenia). Another State noted that many of the services offered to victims were rendered through grants from the federal Government to non-governmental organizations (United States).

22. The Conference of the Parties could provide at its third session a platform for discussion for a substantive and constructive exchange of views and national experience on recovery measures for victims of trafficking in persons. It should be emphasized, in this connection, that the most critical factor in assistance, support and recovery programmes for victims is that they should be, first of all, readily available and also comprehensive and integrated. Medical, psychological and legal services, as well as the provision of accommodation, education and training, will not produce the desired results if they operate in isolation. It would certainly be in the best interests of victims to plan and provide services in a coordinated and collaborative manner. Regarding the availability of recovery measures, it should be

underlined that the provision of assistance should not be dependent upon the victim testifying in criminal proceedings and that criteria for entry to assistance services should not create an artificial class of officially-recognized victims.

23. It is, of course, true that the adoption of recovery measures is not mandatory for States parties to the Trafficking in Persons Protocol because of the cost it entails and the fact that it refers to all States in which victims are found, regardless of the level of socio-economic development or availability of resources. However, States should also be aware of the direct benefits that such recovery measures can provide through enhancing the willingness of victims to testify and, thereby, enabling the prosecution of traffickers. Positive outcomes, which would otherwise be unlikely, include the prosecution of traffickers for other forms of organized crime and the seizure of financial assets.

#### **4. Special needs of victims, in particular those of children**

24. The vast majority of responding States reported that the age, gender and special needs of victims of trafficking in persons were taken into account in implementing protective measures for such victims (see art. 6, para. 4, of the Trafficking in Persons Protocol). Negative responses were received from Portugal (pending revision of existing legislation), Morocco (no explanation provided) and Ecuador (insufficiency of financial resources).

25. In particular, almost all States provided detailed information on that issue, especially regarding the special needs of trafficked children. Two States (Indonesia and Thailand) made reference to both women and children as being considered vulnerable groups of victims requiring special treatment. In conformity with what had been reported in the first reporting cycle of the Conference of the Parties in relation to article 3 of the Protocol, many States underlined the existence of legislative provisions on the protection of trafficked minors. Furthermore, a series of specific measures to protect trafficked minors were reported, including, for example, a national plan for the suppression of trafficking in children (Croatia) or a plan to avoid revictimization of minors (El Salvador); judicial orders to allow minors to give testimony by videoconference (Estonia and South Africa); video-recording and closed hearings for the protection of minors (Sweden); and availability of a representative in charge of protecting human rights of minors during questioning before the courts and filing relevant financial claims (Slovenia). Measures for the protection of the privacy and identity of minors were also mentioned (Costa Rica, Croatia, El Salvador and Italy). One State (Myanmar) pointed out that minors were kept temporarily in youth training schools before tracing their families and reuniting them, while education and vocational training, as well as physical, mental and moral training, were also available. Romania reported the existence of housing centres for minors under the supervision of local authorities and a special reception and accommodation centre for vulnerable categories of asylum seekers (trafficked women and unaccompanied minors). The United States indicated the provision of housing consistent with cultural, linguistic and religious backgrounds and referred to a broader range of protective measures, including medical and mental health services, education, independent living and job skills training, career and college counselling and legal assistance. Moreover, the United States underlined that there was no need for a victim of trafficking below 18 years

of age to cooperate with the investigation and prosecution authorities in order to receive benefits.

26. In discussing national action and practices geared towards servicing the best interests of trafficked children, the Conference of the Parties may wish to take into account guideline 8 (Special measures for the protection and support of child victims of trafficking) of the Recommended Principles and Guidelines on Human Rights and Human Trafficking contained in the report of the United Nations High Commissioner for Human Rights of 20 May 2002 (see E/2002/68/Add.1).

#### **5. Physical safety of victims**

27. Most States referred to measures aiming at securing the physical safety of victims of trafficking in persons (see art. 6, para. 5, of the Protocol). In that context, reference was made to general witness protection provisions and programmes, including police protection, safe-housing and even new identities. Reference was also made to agreements at the sub-regional level for the relocation of victims of trafficking in persons (Estonia). Bulgaria further stated that in the context of pre-trial proceedings, information was provided promptly to victims in relation to measures for their special protection. The provision of such information was subject to the consent of the victims to collaborate in the investigation. Negative responses on the issue were received from several States (Algeria, Ecuador, Morocco, Slovakia and Zimbabwe) without further explanation.

28. Again, the information received from responding States on the issue of the physical safety of victims of trafficking in persons could further be seen in the light of and in conjunction with the corresponding replies of Member States regarding the implementation of article 25, paragraph 1, of the Organized Crime Convention (concerning protection of victims from threat of retaliation or intimidation), which are reflected in the report on the implementation of the Convention (see CTOC/COP/2006/2, para. 70).

29. Although the obligation for States parties to the Trafficking in Persons Protocol is only to “endeavour to provide” for the physical safety of victims of trafficking in persons, the Conference of the Parties may wish to focus its attention on the interrelationship between the two pertinent provisions of the Organized Crime Convention and the Trafficking in Persons Protocol in the light of the *mutatis mutandis* application of the Convention requirements to the latter. In that respect, the relevant discussions could accord priority to ways and means of strengthening and streamlining measures for the physical safety not only of victims of trafficking in persons, but also of their families and persons close to them who may also face threats to their security. It should be noted, in this regard, that the ongoing physical safety of the victim, that is beyond the duration of criminal proceedings, is critical to securing his or her cooperation in such proceedings.

#### **6. Possibility of obtaining compensation**

30. In relation to the implementation of article 6, paragraph 6, of the Trafficking in Persons Protocol, which requires States parties to take measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered as a result of trafficking, the vast majority of the national responses reflected a common approach in terms of establishing the right to seek compensation through

civil proceedings. Only a few States reported otherwise, of which Portugal and Indonesia highlighted the fact that legislation on the issue was pending, whereas Zimbabwe provided no further explanation. Ecuador stressed the lack of relevant mechanisms enabling compensation claims because domestic legislative action against trafficking in persons was too recent and therefore not yet implemented in its entirety.

31. In particular, most States confirmed that their legal system provided for access to compensation usually through civil action after the completion of criminal proceedings. Whereas most of the responding States referred to the right of compensation for physical, mental and moral suffering, a distinction was in some cases reported as to the damages suffered. For example, in South Africa victims of trafficking in persons may apply to court for compensation in case of damage to or loss of property and cannot claim damages for any physical or psychological harm suffered. However, South Africa noted that a sentencing legislative framework was under consideration, which provided that reparation may be imposed for any offence and must be considered in every case, while the damage suffered could be physical, psychological or other.

32. One State highlighted that its domestic legislation provided for mandatory restitution for victims of trafficking in persons, who may alternatively be eligible for compensation from State crime victim compensation funds (United States). A few other States confirmed the possibility for compensation from State funds. Of those States, Germany highlighted that the benefits varied depending on the nationality of the victim and the length of stay in the national territory. Romania clarified that State financial compensation was awarded to victims if the offence had been committed in the national territory or committed in a foreign territory and the victim was its national or legal resident. El Salvador reported on the current preparation of legislation for the establishment of a special victims fund. Finally, Sweden stated that compensation from State funds was possible if the crime was committed within the country, or the victim was a national of or resident in the country.

33. In view of the fact that article 6, paragraph 6, of the Protocol is to be interpreted together with the corresponding provision of article 25, paragraph 2, of the Organized Crime Convention, which also provides for the availability of appropriate procedures or mechanisms whereby compensation or restitution for victims can be sought or claimed by them, the national responses received could further be considered in conjunction with the corresponding replies of Member States regarding the implementation of the Convention provision, which are reflected in the report on the implementation of the Convention (see CTOC/COP/2006/2, para. 71).

34. The Conference of the Parties could provide a forum for an exchange of views on ways to support mechanisms available to victims at the national level for pursuing compensation claims. The legislative framework establishing such mechanisms needs to be comprehensive enough to ensure full enforcement of the right of victims of trafficking in persons to seek, regardless of citizenship, adequate and appropriate remedies, including compensation, through, for example, enabling access to reliable information on processes that have to be followed to that effect.

## 7. Status of victims in receiving States

35. With regard to the status of victims of trafficking in persons in receiving States (art. 7 of the Trafficking in Persons Protocol), the majority of the national responses indicated that temporary residence permits were granted for such victims with a view to enabling their participation in the related proceedings. Only seven States provided negative responses (Algeria, El Salvador, Estonia, Guatemala, Morocco, Portugal and Sweden). Some of the States that confirmed the granting of temporary residence permits referred to a specific reflection period in which appropriate assistance was provided to victims to help them regain control over their lives and consider their options, including taking an informed decision on whether to assist in criminal proceedings (Czech Republic, Poland, Romania, Slovakia and Slovenia). One State specifically reported that the granting of the temporary residence permit was not conditional on cooperation with law enforcement authorities (Croatia). Most States made reference to the possibility for extension of the residence permit for the purposes of ongoing criminal proceedings, while one State confirmed such a possibility in case of humanitarian and compassionate factors that needed to be taken into account (Egypt). The United States referred to visa arrangements for victims who had suffered substantial physical or mental abuse, as well as their families, allowing them to live and work legally in the country for a period of four years.

36. The granting of permanent residence permits was reported to be linked either to asylum cases, applications for granting a refugee status and generally humanitarian and compassionate factors (Canada, El Salvador, Estonia and Finland), or to be applicable to special or exceptional cases (Czech Republic and South Africa). Cooperation of the victim with law enforcement authorities was also reported as a condition for permanent residence (Germany and Slovakia). Slovenia stated that after the completion of the proceedings for which temporary residence was allowed, the victim could apply for permanent residence for other reasons (work, studies or marriage to a national).

37. Building upon the national action reported by the responding States, the Conference of the Parties may devote its attention to further discussing the complementarity between articles 6 and 7 of the Trafficking in Persons Protocol and the need recognized in the latter provision to establish a legal status for victims of trafficking in persons, who often find themselves in destination or transit States without proper identification or travel documents or the underlying legal right to be in that territory. Although there is no obligation on the part of States parties to the Protocol to adopt measures relating to the status of victims, it is encouraging that, at least according to the available data and information, relevant measures have been taken to that effect which have a positive effect on victims coming forward to testify against traffickers, as well as on non-governmental organizations encouraging such victims to whom they provide services to report incidents to the Government.

38. The Conference of the Parties may also consider issues related to the factors that may be considered as pertinent in deciding whether to grant a permanent residence permit to victims of trafficking in persons on humanitarian grounds, taking into account the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the United Nations High Commissioner for Human Rights (E/2002/68/Add.1). Such factors could possibly include the following: the risk of retaliation against the victim and his or her family and the capacity and

willingness of the authorities in the home State to provide protection against such reprisals; the risk of criminal or administrative prosecution by the authorities of the home State for status-related offences; the lack of prospects for social inclusion in the State of origin; the lack of adequate, confidential and non-stigmatizing support services; and the presence of children. In that connection, it should be recalled that the Trafficking in Persons Protocol affects neither the rights, obligations and responsibilities of States and individuals under international human rights law nor the principle of non-refoulement contained in the 1951 Convention relating to the Status of Refugees<sup>3</sup> and the 1967 Protocol relating to the Status of Refugees,<sup>4</sup> the latter two instruments being applicable for victims of trafficking in persons that fall within their scope and protective ambit. Furthermore, the measures set forth in the Trafficking in Persons Protocol are not to be interpreted and applied in a way that is discriminatory to persons on the ground that they are victims of trafficking in persons (see art. 14 of the Trafficking in Persons Protocol).

## **B. Matters related to repatriation of victims of trafficking in persons**

39. Member States were asked to provide information on the measures taken at the domestic level to enable the return of victims of trafficking in persons to their States of nationality or permanent residence without undue or unreasonable delay (art. 8 of the Trafficking in Persons Protocol). A number of States did not provide such information (Azerbaijan, Ecuador, Kuwait, Morocco, Peru, Poland and Portugal). In addition, Estonia noted that the preparation of relevant legislation and the development of an action plan were ongoing. Other States reported that in enabling the return of victims of trafficking in persons, they undertook a risk and security assessment and checked in advance the situation in the State of origin in terms of safety and potential reintegration of such victims (Chile, Croatia, Myanmar, New Zealand and Slovenia) or in terms of the mental and physical condition of the victim (El Salvador). Furthermore, many States highlighted the existence of cooperation mechanisms for the establishment of repatriation programmes with the International Organization for Migration (IOM) (Costa Rica, Czech Republic, El Salvador, Germany, Myanmar, Slovakia and United States), the United Nations Children's Fund (El Salvador) and Interpol (Guatemala). No specific information was provided by the responding Member States on the timeframe of the repatriation process and in particular on whether the return of the victims of trafficking in persons to the State of origin takes place without undue or unreasonable delay.

40. With the exception of a number of responding States (Algeria, Germany, Italy, South Africa, Thailand and the United Kingdom of Great Britain and Northern Ireland), most of the responding States confirmed that the consent of the victim was taken into account in the context of the repatriation process. However, some States noted that that practice did not necessarily mean that consent was viewed as a *sine qua non* condition for the return of the victim. Other States (Belarus, Croatia and Sweden) highlighted the possibility of granting residence or asylum status in case of absence of the victim's consent to repatriation. Canada reported on the national practice to order victims of trafficking in persons to be removed regardless of their consent if they did not meet the criteria for a temporary residence permit or refugee status or in case of lack of humanitarian grounds.

41. With regard to the verification of the nationality or right of permanent residence of victims upon request of the receiving State (see art. 8, para. 3, of the Trafficking in Persons Protocol), almost all of the responding States referred to a general obligation to that effect. One State made reference to national enabling practices even if no specific obligation existed (Turkey). The only States that reported otherwise were Portugal (pending revision of its existing legal framework) and Morocco (no further explanation). Furthermore, the diplomatic consulate authorities and the immigration authorities were reported to have competence on such verification. Other alternatives mentioned included verification through Interpol (Czech Republic, Ecuador and Slovenia) or in the context of bilateral agreements or arrangements and mutual legal assistance mechanisms (Italy).

42. With regard to the obligation of States parties to the Trafficking in Persons Protocol to facilitate and accept the return of victims who are their nationals or residents (art. 8, para. 4, of the Protocol), most of the States (with the exception of Algeria and Portugal) confirmed in their replies that they did so and further reported on the issuance of the necessary documents or other authorization for victims who were their nationals, while some States stated that they may issue temporary travel documents for non-nationals (Indonesia, Slovakia and Slovenia). Reference was also made to proper safety measures for the victims during the repatriation process (Canada). A number of responding States did not provide information on this matter at all (Guatemala, Morocco, Peru, Poland and Turkmenistan).

43. Half of the responding States reported the existence of bilateral or multilateral agreements, arrangements or memorandums of understanding for the return and re-admission of victims, while the other half indicated that no international agreements had been concluded in that field. Romania highlighted that, so far, the national authorities had addressed repatriation issues on a case-by-case basis with the support of the embassies of the States concerned or the Southeast European Cooperative Initiative Regional Centre for Combating Transborder Crime. However, Romania also reported that bilateral agreements had been signed with other European States regarding the re-admission of nationals or individuals without citizenship. In that connection, regional schemes of cooperation, such as those among the Baltic States or in the Mekong sub-region, were mentioned. The Czech Republic clarified that it was not bound by any agreements regulating the repatriation of victims of trafficking in persons exclusively, but also confirmed the cooperation between its Ministry of the Interior and IOM on the application to such victims of an assistance programme for the voluntary repatriation of unsuccessful asylum applicants.

44. The Conference of the Parties may wish to take stock of the information provided above and explore ways and means to promote cooperative bilateral, regional and interregional efforts between destination and origin States for the safe repatriation of trafficked victims. Such efforts could focus on the development of standardized processes to ensure repatriation with full respect of the human rights of the victims and might be developed through, for example, the framework of intraregional and interregional plans of action. A critical issue, however, is to complement the safe return with appropriate rehabilitation measures in the State of origin by promoting effective support programmes to that effect. Such programmes should be based on the conclusions of a risk assessment carried out before repatriation. Wherever possible, communication channels and agreements should be

developed between destination and origin States, with monitoring, case management and feedback built in, for example through referral mechanisms. Moreover, cooperation with non-governmental organizations assisting the victims in the receiving State and continuing to do so in the State of origin could also be conducive to assisting victims' reintegration after the completion of the repatriation process. Such cooperation should be fostered by the establishment of networks between non-governmental organizations, local authorities and Member States.

## **C. Matters related to border measures**

### **1. Liability of commercial carriers**

45. Member States were asked to provide information on legislative or other measures to prevent, to the extent possible, commercial carriers from being used for the purposes of trafficking in persons (see art. 11, para. 2, of the Protocol). In response, many States reported legislative measures and administrative practices falling generally within the ambit of their immigration legislation. Most States also cited specific requirements for such carriers to verify the identity of the passengers and/or supply lists of the passengers to the relevant authorities. For example, Egypt indicated that its domestic legislation required captains of ships and aircraft to submit on arrival a list of names of crew and passengers and those not carrying valid or current passports. New Zealand reported that its immigration law required commercial craft to obtain identity documentation and data, including status as a traveller, from persons intending to travel to the country, under penalty of fine or imprisonment. Slovenia specified responsibilities and sanctions for commercial carriers, who were obliged to provide transport only in cases where the passenger possessed a valid travel document and valid visa or residence permit. The United States referred to the implementation of document pre-inspection programmes at specified ports of entry.

46. Penalties for violation of relevant criminal or administrative provisions in this field (see art. 11, para. 4, of the Trafficking in Persons Protocol) were further mentioned and included criminal sanctions (Canada, Estonia, Kuwait and New Zealand), fines (Czech Republic, Italy, Kuwait and South Africa), as well as the obligation to return the person to the port of embarkation at the carrier's cost (Estonia, Germany, Italy and New Zealand) and the loss of licence (Italy). Preventive measures in terms of information campaigns for carriers were reported by El Salvador.

47. Azerbaijan, Guatemala, Peru and Poland did not reply to this question at all. Belarus was the only State that provided a negative response without further explanation. Ecuador confirmed national efforts to adopt the relevant measures, but also underlined that difficulties had been encountered in controlling the misuse of commercial carriers for the commission of a broad range of offences. Myanmar highlighted the lack of specific legislation in this field, but further referred to national administrative practices whereby immigration authorities controlled carriers to prevent them from being used for purposes of trafficking in persons. Finland stated that no specific carrier liability existed in trafficking in persons cases, but the general carrier liability could be extended to cover such cases as well. Finally, Portugal referred to preventive measures that were foreseen generally for

people operating illegal means of transport and could also be used in trafficking cases.

## **2. Border control measures**

48. The vast majority of national replies reported on measures for strengthening border controls to prevent and detect trafficking in persons (see art. 11, para. 1, of the Trafficking in Persons Protocol). Such measures included, for example, the establishment of joint commissions on border cooperation with neighbouring States (Indonesia); the increase in naval patrols, the control of territorial waters and the search of ships (Kuwait); public information campaigns in airports (Costa Rica); training of immigration officers (Finland and Myanmar); stricter inspection of entries and exits at border checkpoints and strengthening the Anti-Trafficking Unit of the national police force (Myanmar); strengthening of human resources and technical equipment for border controls (Slovakia); training courses for investigative and law enforcement authorities, focusing on the identification of victims (Slovenia and United States), supplemented by a web-based training module including guidelines for criminal investigators, detention, removal and asylum officers, border patrol agents and victim-witness coordinators (United States); strengthening of offshore borders through the use of airline liaison officials and an advance passenger protecting system to detect lost, stolen or invalid travel documents (New Zealand); the recent establishment of the National Immigration Branch controlling entry to and from the national territory and development of relevant pilot projects (South Africa); the establishment of a department at the border police level specialized in combating trafficking in persons and the establishment of a telephone alert system for border police (Romania); and strengthening of the Schengen visa mechanisms (Czech Republic, Germany, Italy, Slovakia and Slovenia). The United States also reported the establishment of a Human Smuggling and Trafficking Centre, which operated as an information fusion centre and clearinghouse to enable the dissemination of information related to trafficking perpetrators and organizations and further brought together representatives from the prosecutorial, law enforcement, intelligence, policy, diplomatic and consular fields.

49. Most of the responding States confirmed that measures were in place under their immigration laws enabling the denial of entry into the national territory or the revocation of visas of persons involved generally in the commission of criminal offences and not necessarily only in the offence of trafficking in persons (see art. 11, para. 5, of the Protocol). One State reported application of such measures not only to traffickers, but also to their family members who knowingly gained benefits from their illegal activities (United States). Some States referred to the evaluating factors and criteria used when taking such measures, which included the danger and likelihood to commit the offence again (Slovenia), as well as endangering public peace and safety or constituting a threat to the public interest either generally (El Salvador, Poland and Slovakia) or in the context of trafficking in persons or organized crime (Canada and Honduras). It was further reported that such measures were taken either on the ground of reasonable suspicion (Croatia, Estonia, Finland and Sweden) or upon conviction (Belarus, Canada, Croatia, Czech Republic, Germany, Italy, Myanmar and New Zealand) or both (South Africa).

### **3. Cooperation with border control authorities of other States**

50. In relation to measures aimed at strengthening cooperation with border control agencies of other States, including the establishment and maintenance of direct channels of communication (see art. 11, para. 6, of the Protocol), most States provided information on existing cooperation mechanisms, including communication and information-sharing, identification of potential trafficking organizations and assistance with victim-related services, either at the bilateral (Germany, Myanmar, Romania and Slovenia) or regional (New Zealand) and sub-regional (Sweden) level. Examples of such cooperation mechanisms mentioned in particular included the Baltic Sea Regional Border Control Cooperation under the Council of the Baltic Sea States (reported by Sweden) and the General Plan for Mutual Cooperation and Coordination for Regional Security in the context of the Common Market of the Southern Cone (reported by Chile). New Zealand specified that a Regional Movement Alert List mechanism with Australia and the United States was in place and enabled the exchange of information on lost and stolen passport data. Reference to the establishment of direct channels of communication between border control agencies was made by Bulgaria, Kuwait, New Zealand and Slovenia, whereas Chile underlined its cooperation with Interpol in that field. The United States referred to briefings for foreign dignitaries, as well as cooperation with foreign border control agencies, through international training missions focusing on areas such as investigation methodologies in trafficking in persons cases, trafficking in persons indicators, global networks, victim interviews and services and task force methodology. A specific programme of cooperation and collaboration with Mexico on cross-border criminal enterprises was further reported by the United States.

51. The information received from responding States on issues related to border measures could further be considered in conjunction with the national replies regarding the implementation of article 27 of the Organized Crime Convention on law enforcement cooperation (see CTOC/COP/2006/2, paras. 56-63).

## **D. Matters related to the security and control, as well as legitimacy and validity, of documents**

### **1. Security and control of documents**

52. Article 12 of the Trafficking in Persons Protocol requires the adoption of measures to ensure the quality, integrity and security of travel or identity documents. States parties are required to take measures to make it more difficult to misuse, falsify or unlawfully alter, replicate or issue such documents, as well as measures to protect not only the use, but also the production and issuance process of such documents against corruption, theft or other means of diversion.<sup>5</sup> Most of the responding States reported the adoption of measures to that effect, including regular reviews of the production and issuance process and upgrading of technology and equipment used for ensuring the security and control of documents.

53. In that connection, reference was made to specific measures, in particular in terms of security standards adopted in this field. Thus, a number of States (Canada, Chile, Croatia, Czech Republic and Estonia) referred to the adoption of standards proposed by the International Civil Aviation Organization<sup>6</sup> or the European Union

standards enshrined in Council of the Union European Regulation 2252/2004 on standards for security features and biometrics in passports and travel documents issued by member States (Czech Republic, Estonia, Germany, Italy, Slovakia, Slovenia and Sweden). The incorporation of multiple security features into travel documents (United States) and the adoption of biometric standards (Indonesia and New Zealand) or preparations for such adoption (Romania) were also reported.

54. The information received by Member States on these matters could provide the opportunity for further discussion on potential financial and technical problems likely to be encountered, in particular by developing countries seeking to implement measures ensuring the security and control of documents. It would therefore be useful for the working group on technical assistance, scheduled to meet during the third session of the Conference of the Parties as mentioned above, to take into account the relevant needs for technical assistance, providing guidance on relevant priorities and facilitating mobilization of potential resources.

55. The Conference of the Parties may wish to utilize in future additional information to be contained in a study on fraud, the criminal misuse and falsification of identity and related crimes, currently under preparation by the Secretariat in accordance with Economic and Social Council resolution 2004/26 of 21 July 2004.

## **2. Legitimacy and validity of documents**

56. Article 13 of the Trafficking in Persons Protocol establishes an obligation to verify, upon the request of another State and within a reasonable time, the legitimacy and validity of travel or identity documents suspected of being used for the purposes of trafficking in persons. The majority of the responding States reported that they carried out such verification within the framework of cooperation agreements with other States and some of them confirmed that practice even in cases where a relevant obligation was lacking. Furthermore, the law enforcement and immigration authorities were mainly mentioned as being competent for such verification. The use of Interpol channels and mechanisms for verification purposes was also reported (Croatia, Slovakia, Slovenia and United States).

## **III. Concluding remarks**

57. The overview of the national measures and practices presented above for the implementation of the Trafficking in Persons Protocol provisions currently under consideration by the Conference of the Parties demonstrates that the majority of States parties to the Protocol that responded to the questionnaire have basically and within their means adopted a legislative and institutional framework to ensure such implementation. It is inevitable, however, that in view of the different levels of capacity of Member States fully to implement existing or future measures in the areas under discussion, more concerted efforts have to be made to assist the responding States in need, in developing effective and multidisciplinary anti-trafficking strategies and building dedicated and sustainable resources to implement such strategies. For this reason, the Conference, and in particular the working group on technical assistance, may wish to further consider and identify concrete areas for tailor-made ways of addressing technical assistance needs, as reported by the

responding States, in relation to the requirements of the Trafficking in Persons Protocol. Thus, possible areas of technical support might cover activities geared towards improving existing measures or assisting in creating new mechanisms to combat trafficking in persons and to protect and assist victims or even, at a basic level, helping States lacking the capacity to do so to report adequately to the Secretariat on anti-trafficking measures and policies (from the States responding during the second reporting cycle of the Conference of the Parties, Ecuador reported that its national authorities needed assistance in collecting and submitting relevant information to the Secretariat and completing technical papers such as the questionnaire on the implementation of the Trafficking in Persons Protocol).

58. Nevertheless, the Conference of the Parties should devote particular attention to the persistent problem of under-reporting encountered in the process of reviewing the provisions of the Protocol, as the rate of responses received from States parties to the Protocol during the second reporting cycle of the Conference was lower than that of the first reporting cycle, during which that particular problem had already been identified. The continuous lack of information from a representative sample of States parties seriously affects the work of the Conference in reviewing efficiently the implementation of the Protocol provisions and further undermines the assistance that this body can provide after assessing the needs of States on the basis of the information made available by them. The Secretariat raised its concerns about this problem to the chairpersons of the regional groups of Member States of the United Nations and asked them to use their good offices and call upon States members of their respective regional group that had not done so to reply to the relevant questionnaires. The tables contained in document CTOC/COP/2006/13 provide an overview of the status of national responses in each of the regional groups separately. The Conference of the Parties may wish to consult those tables in order to gain a clear picture of where the problem of under-reporting is more acute. In addition, it may consider whether it might be appropriate to move away from its questionnaire-based approach and use other methods of acquiring the necessary information for reviewing the implementation of the Protocol.

#### Notes

- <sup>1</sup> Responses received after 24 July 2006 are not reflected in the present analytical report, but will be taken into account at a later stage in the context of further updating the informative material made available to the Secretariat by Member States.
- <sup>2</sup> See International Labour Office, *A Global Alliance against Forced Labour*, (Geneva, 2005), available at [http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD\\_BLOB?Var\\_DocumentID=5059](http://www.ilo.org/dyn/declaris/DECLARATIONWEB.DOWNLOAD_BLOB?Var_DocumentID=5059).
- <sup>3</sup> United Nations, *Treaty Series*, vol. 189, No. 2545.
- <sup>4</sup> *Ibid.*, vol. 606, No. 8791.
- <sup>5</sup> This article has to be interpreted as including not only the creation of false documents, but also the alteration of legitimate documents and the filling in of stolen blank documents. The intention was to include both documents that had been forged and genuine documents that had been validly issued but were being used by a person other than the lawful holder (see the *Travaux préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (United Nations Publication, Sales No. E.06.V.5), Part two, *Protocol to Prevent, Suppress and Punish Trafficking in Persons*,

*Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, article 12, sect. C, interpretative note (b).*

- <sup>6</sup> Such as the guidance material prepared under the auspices of the Group of Eight Lyon/Roma Group relating to minimum security standards for the handling and issuance of machine-readable and other passports, as well as the Guidelines for Dealing with External Passport and Other Travel/Identity Document Fraud.
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