



THE PRESIDENT
OF THE
GENERAL ASSEMBLY

9 October 2017

Excellency,

I am pleased to enclose herewith a letter from the co-facilitators of the intergovernmental consultations and negotiations on issues related to the global compact, the intergovernmental conference as well as their preparatory process, H.E. Mr. Juan José Gómez Camacho, Permanent Representative of Mexico to the United Nations, and H.E. Mr. Jürg Lauber, Permanent Representative of Switzerland to the United Nations. The letter transmits the co-facilitators' summary of the Fifth Informal Thematic Session of the preparatory process, which was held at the United Nations Office at Vienna on 4 and 5 September 2017.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in dark ink, appearing to read 'M. Lajčák', with a large, sweeping flourish at the end.

Miroslav Lajčák

All Permanent Representatives and
Permanent Observers to the United Nations
New York



PERMANENT MISSION OF MEXICO
TO THE UNITED NATIONS



Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Permanent Mission of Switzerland to the United Nations

New York, 5 October 2017

Excellency,

We are pleased to write to you in our capacity as co-facilitators to lead the intergovernmental consultations and negotiations on issues related to the global compact for safe, orderly and regular migration, the intergovernmental conference, as well as their preparatory process.

In accordance with paragraph 21 of A/RES/71/280, it is our honour to herewith submit the co-facilitator's summary of the fifth informal thematic session of phase I in the preparatory process, entitled "*Smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims*" which was held at the United Nations Office at Vienna on 4 and 5 September 2017.

We take this opportunity to thank all delegations for their constructive participation and engagement. We kindly remind delegations to submit their written inputs to gcmigration@un.org, and encourage sharing further relevant inputs throughout the process. Furthermore, we trust that all Member States and other stakeholders will continue to participate actively in the process.

Please accept, Excellency, the assurances of our highest consideration.

Juan José Gómez Camacho
Ambassador and Permanent Representative of
Mexico to the United Nations

Jürg Lauber
Ambassador and Permanent Representative of
Switzerland to the United Nations

Permanent and Observer Missions
to the United Nations
NEW YORK

Global compact for safe, orderly and regular migration

“Smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims”

4-5 September 2017, United Nations Office at Vienna

Co-facilitators’ summary

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ANNEX: Programme of work

I. Introduction

The fifth informal thematic session in phase I (consultations) of the preparatory process leading to the adoption of the global compact for safe, orderly and regular migration entitled "*Smuggling of migrants, trafficking in persons and contemporary forms of slavery, including appropriate identification, protection and assistance to migrants and trafficking victims*", was held at the United Nations Office at Vienna on 4 and 5 September 2017. The session consisted of opening remarks by the co-facilitators and the Secretary-General of the Intergovernmental Conference, three expert panels and a summary panel. In addition, the co-facilitators invited all stakeholders to an informal dialogue on the morning of the second day.

In total, 110 Member States attended the session and made over 120 interventions. Additional interventions were made by 8 UN agencies and 11 non-governmental stakeholders. Another 18 non-governmental stakeholders made oral inputs during the informal dialogue with the co-facilitators before the informal thematic session resumed on the morning of the second day.

The purpose of this summary is to highlight the main aspects of the discussion on the basis of interventions delivered in the room and inputs received. It also summarizes the ideas presented and recommendations made for consideration in this and subsequent phases of the preparatory process. The contents of this summary will serve as one of the inputs for discussion at the stocktaking meeting in Puerto Vallarta, Mexico on 4-6 December 2017.

II. Panels

The inter-agency issue brief prepared by the Secretary-General of the Intergovernmental Conference for the fifth informal thematic session was presented in the opening segment and served as a basis for the panels and the subsequent discussions.

1. Panel on smuggling of migrants

Panelists offered a rich assessment of the multifaceted nature of migrant smuggling. They reaffirmed that the act of migrant smuggling is a crime against the State in accordance with the United Nations Convention against Transnational Organized Crime (UNTOC), particularly its Additional Protocol Against the Smuggling of Migrants by Land, Sea and Air (Smuggling Protocol). Additionally, evidence was presented showing that laws or policies that criminalize migrants often had unintended consequences and could exacerbate vulnerabilities. Panelists called on Member States to question commonly held assumptions about migrant smuggling and highlighted dissonance between reality and perceptions. Some available research data presented by panelists indicate that migrant smugglers do not tend to be organized in large criminal syndicates, but are instead networks that expand through familial and social ties and on the basis of needs. The "business model of smuggling" was noted by a panelist as being built on "economies of scale" with more research needed on how payments are structured, on the profiles of smugglers working on specific routes and the types of violence used. It was mentioned that overly restrictive migratory policies and lack of regular pathways tended to lead more migrants to turn to smugglers, who in consequence increase their prices and become increasingly unscrupulous in the risks they expose the migrants to. Panelists also noted with concern that smugglers' services are often used by persons in vulnerable situations who may qualify for asylum, thereby smugglers become illegitimate agents that perversely facilitate protection in complex situations in the absence of regular pathways.

The discussion made clear that smuggling of migrants merits serious consideration by Member States. In order to better understand the phenomenon of migrant smuggling, there was a call to improve data collection and data processing, while noting current contributions, including by IOM, UNODC and academic institutions. The exchange revealed a tendency to conflate migrant smuggling with human trafficking and that more efforts are needed to generate a holistic understanding of migrant smuggling. While the distinction between the two crimes is clear in theory, the lines between the two phenomena are often blurred in reality. However, participants emphasized the preservation of the distinction as being critical from a legal point of view, in research, policy development and implementation as well as for protection and assistance measures. It was reaffirmed that international law provides a legal framework for Member States to address the smuggling of migrants, while noting that effective implementation of the

Smuggling Protocol requires far more than legislation. Delegations pointed to a series of practices at the national level and recognized that effectively addressing smuggling of migrants required bilateral, regional and global cooperation. Furthermore, participants pointed to the risk of criminalizing irregular migration while combatting smuggling of migrants, highlighting the fact that many people are compelled to use smugglers' services to seek protection abroad. Several stakeholders emphasized that criminalization of irregular migration and restrictive border policies tend to fuel stigmatization, racism and xenophobia towards migrants that can negatively affect their exercise of rights in transit and destination countries. Ultimately, it also impacts public opinion that can in turn, influence policy development.

2. Panel on trafficking in persons and contemporary forms of slavery

Panelists highlighted that human trafficking is not a crime exclusive to international migration, but a serious violation of human rights in any context. It was suggested that the data available represents only a fraction of the actual human trafficking that takes place and that many cases remain unreported. Panelists coincided in stating that migrants were more vulnerable and often particularly exposed to falling into the hands of traffickers. Such vulnerability can be exacerbated by various factors, such as an irregular status, lack of integration, or having used the services of smugglers. Panelists positively noted the almost universal ratification of the Additional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), and emphasized the achievements made since its entering into force. Nonetheless, concerns were raised that ratification does not always translate into effective implementation, despite many strong laws at national levels in place. The relatively low number of prosecutions and an even lower share of convictions were shared as examples of challenges to effectively take action against trafficking. Furthermore, panelists noted impunity as a widespread obstacle, highlighting that the vast majority of convictions in human trafficking cases correspond to sexual exploitation, as opposed to effective judicial proceedings for those who exploit people in labour contexts. To address illicit practices at the interface of trafficking and labour migration, panelists emphasized, among others, the importance of achieving decent work for all as reflected in the 2030 Agenda for Sustainable Development, adherence to international labour standards for migrant workers, and access to justice, including effective remedies and compensations for violations of their rights. The importance of definitions was further emphasized by one panelist, who noted "contemporary forms of slavery" as being a term that captures several other concepts, but remains itself undefined. In exploring the impact that this new term may have on victims and its utility for States, the panelist pointed to the value of applying existing legal definitions of related concepts such as slavery and trafficking in persons that have been agreed to by States.

In the discussion, Member States echoed the statements by panelists that trafficking in persons is among the most serious human rights violations. In order to effectively address the phenomenon, participants referenced existing frameworks including the Trafficking Protocol, the Global Plan of Action to Combat Trafficking in Persons, the 2030 Agenda for Sustainable Development and particularly goals 5.2, 8.7 and 16.2 as providing a sound foundation to formulate concrete actions. Furthermore, Member States shared experiences of translating international law into national policies, for example, by establishing National Action Plans and inter-ministerial or even multi-stakeholder working groups as well as structuring policies along the "4 P" paradigm of protection, prevention, prosecution and partnerships. In this context, participants raised several key measures that must be taken to overcome challenges related to identification of victims, carrying out prosecutions, ensuring convictions of traffickers and appropriate financial intelligence. Such measures need, above all, to ensure that the Trafficking Protocol is operationalized, including by screening for trafficking among migrants and among those who are seeking asylum; tackling root causes and drivers of trafficking; strengthening proactive research and data collection; enhancing protection and information sharing; regulating private recruitment firms; prioritizing investigations efforts to identify, report and seize disrupt financial flows of transnational organized crime engaged in trafficking; and to strengthen partnerships, coordination, and multidisciplinary action between and within States, as well as with international organizations, civil society, private sector, unions, and labour associations. Participants also acknowledged that more attention was needed regarding issues related to demand for goods and services produced through exploitation; the relationship between armed conflict and trafficking; and appropriate forms of regional and international responses – across countries of origin, transit and destination. Finally, many delegations called for human rights-based, holistic

approaches to human trafficking, highlighting that the most marginalized or vulnerable migrants are often those most at risk of being trafficked in countries of origin, transit or destination.

3. Panel on appropriate identification, protection and assistance to migrants and trafficking victims

The panelists analyzed various existing trends in State practices relating to the protection of smuggled migrants and victims of trafficking. They widely recognized that while general political will appears to exist globally to combat human trafficking, concrete and practical solutions that work are difficult to implement without first undergoing serious fact-based analysis. Some suggested reframing of economic paradigms by providing decent work for citizens and migrant workers; ensuring regular pathways for migration; reconciling laws and policies relevant to migration and human trafficking and developing standard operating procedures at the national and regional levels for identification and protection. While there is a need for clear legal distinction between smuggling and trafficking in order to avoid blurred lines, the guiding priority must be to improve identification capacities to extend protection and assistance to all persons in need, whether as victims of trafficking or subject to other harms, including those suffered during smuggling, and to strengthen access to justice and other forms of assistance. In other words, such definitions should not serve to undermine access to protection and assistance. Particular attention was paid to the disproportionate way in which women and children are prone to being trafficked.

In the discussion, participants shared a general understanding that neither trafficking in persons nor smuggling of migrants can be addressed by "law enforcement only" approaches. It was emphasized that criminal justice and human rights-based responses are compatible and can take into account both the needs of migrants and the security concerns of States' regarding a lack of information about entries. Several practical measures were shared towards better identifying, protecting and assisting migrants and victims of trafficking. The knowledge base offered by the UNODC Issue Papers on definitional issues relating to the Trafficking in Persons and Smuggling of Migrants Protocols was highlighted, as was the role that victims of trafficking have played in advocating for the rights of other victims or by having testified against traffickers. Inter-ministerial and multidisciplinary cross-border cooperation, as well as intelligence sharing between State and non-State actors were emphasized as essential aspects for effective prevention and protection. General guidance on protection policies was also called for, in addition to concrete recommendations on the protection of the human rights of migrants to prevent them from being trafficked or exploited. Finally, the issue of heightened vulnerabilities featured prominently. It was stated that States should cooperate more closely to ensure that child protection systems effectively account for child victims of trafficking, including by providing treatment in accordance with the best interests of the child.

4. Summary panel

The summary panel, consisting of the five moderators and the thematic expert, summarized the substantive discussions held during the two-day informal thematic session. On that basis, the thematic expert identified common themes and areas for further discussion drawing from the statements made. In the ensuing discussion, delegations and stakeholders reiterated issues of priority and recommendations, provided views on the forthcoming session in this phase of the process and on the potential format of the global compact.

III. Areas of discussion

a. Overarching frameworks and principles

There was strong support for the UNTOC and its Trafficking and Smuggling Protocols. These instruments were cited by many Member States as being central to their efforts to combat the two phenomena. Additionally, the Global Plan of Action to Combat Trafficking in Persons was cited as framework to reinforce cooperation relating to trafficking. Another part of the discussion focused on the undisputed principle of national sovereignty and the right of each State to determine admission to its territory. However, it was affirmed that such national sovereignty must be exercised responsibly in concert with fundamental norms of international law. This includes, for example, the right of access to justice, the right to consular notification and the principle of non-refoulement. Several delegations cited the need to align all efforts with the 2030 Agenda for Sustainable Development, particularly in light of its goals and targets relating to migration and to human trafficking. Other principles mentioned include the priority to “do no harm” and hence to look closely at how national policies can have unintended consequences and exacerbate vulnerabilities. Discussions surrounding narratives were also recurrent, with several participants pointing out that securitization of international migration appeared to have a mutually-reinforcing relationship with criminalization of migrants and exacerbation of vulnerabilities. Finally, it was repeatedly stated that international cooperation, responsibility sharing and more institutionalized and proactive coordination within and across borders, through victim-centered, whole-of-government and whole-of-society approaches, were needed to effectively address transnational phenomena.

Concrete issues and recommendations presented for consideration included:

- Accede to and ratify UNTOC and the two relevant Protocols thereto, and adopt measures for their effective implementation
- Maintain the distinction laid out in the issue brief between smuggling of migrants and trafficking in persons as a basis for future dialogues and negotiations
- Develop a glossary of migration-related terms in order to move towards specific understandings of multidimensional phenomena and develop guidelines for the distinction of the two crimes
- Avoid narratives that securitize migration and criminalize migrants, recognizing that it is a multidimensional phenomenon and that irregular migration, including in the case of migrant smuggling, cannot be addressed effectively through a law enforcement only approach
- Review national policies that may create or exacerbate vulnerabilities or unintentionally increase the likelihood of smuggling or trafficking
- Ensure that definitions of human trafficking and smuggling of migrants used in policy planning and in judicial prosecutions are consistent with relevant standards of international law, particularly international human rights law
- Avoid criminalization of migrants who have been smuggled or trafficked and focus prosecution on those who endanger the lives of others, directly or indirectly
- Promote integrated, multi-sector and multi-disciplinary approaches to trafficking in persons and smuggling of migrants at all levels
- Apply the non-refoulement principle in cases of trafficking in persons and smuggling of migrants
- Ratify and implement relevant ILO labour conventions and promote decent work standards
- Consider the Global Plan of Action on Trafficking in Persons as a central guiding document

b. Identification

Early identification and appropriate referral systems of human trafficking victims and of smuggled migrants who have experienced abuse was deemed a high priority in the discussion, as it is key in activating protection, assistance and prosecution protocols. Early identification also significantly contributes to preventing long-term harm to individuals and the expansion of criminal networks. The importance of child and gender-sensitive approaches to identification procedures was emphasized as well as the well-coordinated cooperation of all relevant actors, including civil society organizations and the private sector. It was highlighted that particularly cases of human trafficking for labour exploitation remain over-proportionally undetected due to a lack of awareness about this crime and the respective absence of

specialized protocols. The thresholds for prosecution relating to labour exploitation in human trafficking laws were identified as main obstacles in this respect.

Concrete issues and recommendations presented for consideration included:

- Establish national and international referral mechanisms, including improved screening measures at borders, that include all relevant agencies, authorities and other actors for the identification of victims of trafficking and smuggled migrants in vulnerable situations with clear procedures and roles of frontline actors, including special referral mechanisms for children
- Promote early identification of human trafficking victims and smuggled migrants in vulnerable situations
- Ensure effective and updated screening in places of first arrival, including through interviews with well-trained officials and social workers in order to prevent exploitation likely to take place later in the journey
- Establish common guidelines and protocols for the identification of human trafficking victims among those seeking international protection, including by appointing a human trafficking focal point in asylum centers
- Use innovative technology, particularly ICT for identification purposes
- Involve employment agencies, labor inspectorates and employers in the identification of victims of trafficking for labour exploitation
- Strengthen effective screening of migration routes to identify victims of trafficking and abusive smugglers

c. Protection, assistance and addressing vulnerabilities

Throughout the discussion, participants highlighted that migrants who are smuggled and those who become trafficked are often the most vulnerable of the population in countries of origin, transit and destination. In the case of smuggled migrants, an asymmetrical for-profit relationship exists. However, once the act of smuggling is completed, many migrants are left vulnerable. In the case of human trafficking, exploitation of the victim compounds profound psychosocial, economic, health and other vulnerabilities. Statistics shared during the discussion pointed to a growing number of men being trafficked, while most victims remain women and children. Hence, many statements called for gender-sensitive and victim-centered protection and assistance protocols to be in place. It was also highlighted that discussions on human trafficking tend to center around sexual abuse and exploitation. Consequently, labour-related trafficking is often overlooked or considered to be of lesser severity than the crime of trafficking itself. Irregularity, lack of education, unfamiliarity with local laws and rights, extortion, difficult access to justice and the absence of gender-sensitive anti-smuggling or anti-trafficking policies were all cited as factors contributing to vulnerabilities that should be addressed.

Concrete issues and recommendations presented for consideration included:

- Develop specific guidelines and protocols, introduce appropriate case management, and employ specialized focal points in relevant government ministries to provide protection and assistance to women, children, particularly unaccompanied and separated migrant children, and other populations to prevent all forms of exploitation and abuse
- Implement regularization and firewall policies as means to protect human rights, promote inclusion and build trust with local authorities, facilitating identification and prosecution of perpetrators of crimes
- Include specialized training across all sectors for relevant public servants, including in law enforcement, to facilitate identification, assistance and counselling to victims of human trafficking or any form of exploitation related to smuggling
- Ensure access to birth registration and consular documentation to all migrants in order to avoid situations of statelessness or other vulnerabilities, while recognizing that irregularity itself is a form of vulnerability

- Increase systematic cooperation between immigration officials and child protection actors to better identify and assist child victims of violence, exploitation and abuse related to human trafficking and migrant smuggling
- Strengthen capacity for alternative care and guardianship arrangements to ensure that unaccompanied children have their best interests considered, receive child-friendly information and have access to legal assistance
- Contemplate effective measures relating to the safe return of victims, such as assisted voluntary return, to ensure they are not re-victimized and that victims are not further harmed by the prosecution process
- Ensure safe repatriation of smuggled irregular migrants, including by enhancing bilateral and regional cooperation
- Consider policy responses that take into account the complex dynamic of migrant smuggling as it relates to the provision of humanitarian protection, particularly when no adequate regular pathways exist for those forcefully displaced
- Provide due consideration for the agency and voice of women and children in designing responses to identify and migrants at risk
- Recognize the inherent vulnerabilities of irregular migrants, particularly girls, boys and adolescents, by restating applicable principles and guidelines to protect them, consistent with international standards, as envisioned in the New York Declaration
- Establish centers along migratory routes that provide services, such as shelter, food, phone access, information on rights, asylum procedures, as well as child and gender-sensitive assistance
- Render assistance to migrants at sea on the basis of the principle of shared responsibility
- Encourage harmonized standards on reception, residence permits and family reunification of victims of human trafficking, including access to health and education regardless of status
- Provide temporary or permanent residence permits and humanitarian visas for smuggled migrants in vulnerable situations
- Allocate financial resources for the protection, assistance and compensation of human trafficking victims
- Establish ombudsperson positions and advisory boards to promote protection of victims of trafficking

d. Prevention and awareness-raising

Both in the discussions about smuggling of migrants as in those regarding human trafficking, Member States repeatedly expressed a strong preference for prevention and awareness-raising. In the case of smuggling, it was stated that restrictive immigration policies often lead to more dangerous routes, which are used by smugglers and pose serious threats to the safety and dignity of migrants. Some examples of best practices were shared that include targeted campaigns directed at migrants, consumers, business and the public at large, as well as efforts to eliminate legal lacunae that hamper prosecutions. Other participants cited the need to create or enhance regular pathways as a means to reduce operational space for smugglers. In the case of human trafficking, participants made reference to existing international initiatives, within and outside of the UN framework that can be effective in preventing this grave violation of human rights. Many delegations highlighted national action plans against trafficking. A common theme throughout the discussions was the need to address the drivers of migration holistically through measures that promote sustainable development, including education and job creation, in order to move from a reactive paradigm to a proactive, solutions-based framework.

Concrete issues and recommendations presented for consideration included:

- Prevent trafficking by addressing demand for goods and services produced through exploitation
- Ensure equal access to justice and protection under the law for migrants in order to prevent and address labour exploitation and human trafficking

- Promote opportunities for regular labour migration, particularly for semi- and low-skilled migrants and in sectors that thrive on exploitation, to address demand and prevent migrant smuggling and human trafficking
- Establish safeguards against social dumping, debt bondage, unethical recruitment and exploitation and promote decent work of labour migrants, particularly low-skilled migrants
- Organize multi-lingual information campaigns and awareness events at the international, regional, national and local levels to alert migrants of the dangers involved in irregular migration carried out through smugglers, including at the pre-departure stage in cooperation with local authorities, consular offices, the private sector, academia and NGOs
- Develop radio programmes that provide examples on the risks of migrant smuggling and human trafficking
- Empower victims of human trafficking to share their stories, seek justice, and obtain reparations for the harm caused
- Promote non-discriminatory access to child protection in order to prevent child trafficking
- Incorporate a gender perspective into migration policies, and call for strengthened national laws, institutions and programs to combat gender-based violence
- Recognize corruption as a key factor that facilitates human trafficking and migrant smuggling and take effective counter-corruption measures
- Conclude bilateral and regional agreements on temporary higher learning and professional exchanges to increase livelihood opportunities in the countries of origin
- Include anti-trafficking and anti-smuggling measures in international frameworks relating to armed conflict
- Review policies that regulate prostitution as a counter-trafficking measure
- Address drivers of modern slavery and human trafficking for labour exploitation as well as abuses in supply chains with the private sector
- Enact laws and take measures on the regulation, registration and monitoring of private recruitment agencies to prevent trafficking for labor exploitation
- Introduce randomized audits by employment agencies in sectors prone to exploitation
- Provide guidance and protocols to embassies and consular offices to detect suspicious visa applications
- Ensure the non-penalization of migrants rights' defenders by counter-smuggling laws

e. Dismantling of criminal networks and prosecution

Participants emphasized the priority to hold perpetrators accountable for the crimes committed. Given the always transnational nature of migrant smuggling, and the frequent transnational nature of human trafficking, enhanced cooperation between States was highlighted as an indispensable area of work. The effective detection, deterrence and prosecution of criminal networks were assessed as pivotal elements to address both human trafficking and migrant smuggling. In this regard, many delegations called for a balanced approach that takes into account the protection of the victims of trafficking and needs of smuggled migrants in vulnerable situations. Overall, participants again highlighted the disappointingly low level of convictions related to human trafficking, citing obstacles including lack of witness cooperation, jurisdictional hurdles and general lack of capacities to effectively implement laws in place. Some Member States pointed to worrisome rates of impunity for human trafficking crimes and called for greater international cooperation to address this trend, including on better international cooperation between intelligence agencies, police branches, judicial authorities and international organizations. The discussion did not suggest a legislative redefinition of human trafficking or migrant smuggling *per se*, but did point to some existing practices that could best assist Member States in the more effective implementation of their relevant obligations under international law.

Concrete issues and recommendations presented for consideration included:

- Establish robust victim protection mechanisms and safeguards against the criminalization of human trafficking victims to promote witness cooperation

- Systematize information and intelligence sharing to target smugglers, traffickers and members of networks that exploit migrants
- Establish specialized prosecutor offices and special sections within police forces to deal particularly with cases of human trafficking and migrant smuggling
- Improve interagency cooperation at the national level in the field of criminal prosecution through the establishment of multidisciplinary strategies that combine prosecution with training, intelligence and victim protection
- Provide victims of human trafficking with access to justice, labor markets, healthcare as well as socioeconomic support
- Enhance financial intelligence sharing and cooperation across borders in order to disrupt illicit financial flows and dismantle national and transnational criminal networks that engage in human trafficking
- Promote partnerships between financial transaction analysis centers, financial institutions, law enforcement and Interpol to enhance capacities in tracing money flows, and detecting and investigating traffickers, based on indicators such as multiple motel bookings, large expenditures at drug stores and frequent ATM deposits in the middle of the night
- Establish national hotlines that go straight to the dedicated police unit and involve specialized prosecutors
- Establish checkpoints at borders that are trained to effectively identify victims of human trafficking, provide immediate assistance, and disrupt the criminal activity
- Review legal frameworks for the appropriate prosecution and punishment of migrant smugglers
- Enact legislation on human trafficking that includes special provisions for different forms of the crime, such as sexual exploitation, labour exploitation including supply chain transparency, forced begging, organ removal, etc.
- Strengthen accountability for the worst forms of human trafficking including by exploring a role for the ICC in investigating cases which may amount to crimes against humanity

f. Capacity building, cooperation and partnerships

Delegations recognized that the primary responsibility to prevent, suppress and punish trafficking in persons lies with the State. They reaffirmed that safe, orderly and regular migration includes the responsibility of the State to enact efforts against the practice of migrant smuggling. Because smuggling, trafficking and contemporary forms of slavery are complex crimes involving many actors, motivations, modalities and, in some cases, jurisdictions, delegations called for the enhancement of capacities and the promotion of partnerships, including at bilateral and regional levels as well as with non-governmental stakeholders, to effectively combat these crimes with a multi-disciplinary approach.

Concrete issues and recommendations presented for consideration included:

- Promote international cooperation to ensure that all new arrivals receive information on how to report trafficking in a language they understand as well as in an age and gender sensitive manner
- Use international cooperation to promote common human rights-based training to combat smuggling, trafficking and exploitation
- Promote a global, joined up approach to trafficking in persons, including through the Inter-Agency Coordination Group against Trafficking in Persons
- Endorse Alliance 8.7 as a multi-stakeholder platform for accelerating timelines, conducting research and sharing knowledge, driving innovation, and increasing and leveraging resources in line with the 2030 Agenda for Sustainable Development
- Improve the capacities of labour inspectors to efficiently and effectively address exploitation
- Develop partnerships to effectively implement and monitor progress on the United Nations Global Plan of Action to Combat Trafficking in Persons
- Consider the results of the expert workshop held in Istanbul, Turkey, on 5 and 6 July and entitled "Regional Conference on Counter Migrant Smuggling: Innovative Ideas and Supporting New Models of Cooperation"

- Increase consular capacities in order to identify victims and streamline assistance and protection to smuggled migrants in vulnerable situations and victims of trafficking
- Establish information sharing mechanisms, such as an international training center or liaison networks, along migration routes in order to enhance international partnerships
- Make use of international cooperation to improve proactive, rights-based screening procedures at entry points and, where appropriate, employ best practices at bilateral and regional levels
- Establish partnerships with civil society, academia and the private sector to identify and assist victims of trafficking and exploited migrants
- Engage the private sector to combat trafficking and contemporary forms of slavery, for example through establishing best practice guidelines for the ethical recruitment of migrant workers; supply chain transparency; developing incentives for innovative business behavior and creating innovative mechanisms to promote safeguards for victims
- Consider implementation of UNHCR's recently updated 10 Point Plan of Action in Refugee Protection and Mixed Migration
- Support capacity-building and training of relevant agencies and authorities in developing countries, such as border police, coast guards, other frontline responders, judiciary officials, prosecutors etc.
- Call upon the support of international organizations to facilitate cross-border intelligence sharing and analysis

g. Data

As has been the case with previous sessions, the discussion included a focus on the data currently available and the related deficiencies. Many delegations recognized the deficiency in the existing evidence around migrant smuggling. It was noted that notwithstanding the robust data and initiatives that exist, too little is known about this phenomenon, including the profile and role of the smuggler, in order to be able to effectively challenge depictions and assumptions. Accordingly, it was emphasized that effective prevention measures urgently require collaborative and multidisciplinary approaches and commitment to improved data collection, research and information sharing. Participants pointed to initiatives that have been taken so far, that can be further strengthened and built upon. With regards to human trafficking, it was widely noted that the illegal and clandestine nature of the crime, coupled with inadequate assistance to victims and complexity of networks made it difficult to have a full picture of the phenomenon. Participants recognized that the availability of reliable data was crucial for measuring progress towards combatting trafficking in persons and contemporary forms of slavery and meeting Sustainable Development Goal 8.7. Panelists that addressed data pointed to the IOM's global review of the emerging evidence base on migrant smuggling data and research as a key contribution to the transition from assumptions to facts-based policy making.

Concrete issues and recommendations presented for consideration included:

- Consolidate available disaggregated data collection and sharing among all relevant national stakeholders in order to better inform policy formulation and develop joint responses and programmes to prevent and address migrant smuggling and human trafficking
- Ensure high standards of protection in data gathering and storage for the security and privacy of the person, only storing personal information with a specific purpose
- Encourage victim protection by collecting data in a rights-based, child - and gender-sensitive - manner
- Regularly monitor the causes that lead migrants to employ smugglers in order to identify and address root causes and drivers
- Support the IOM Counter Trafficking Collaborative that provides an open access data platform on human trafficking
- Analyze the trends of social media used by migrant smugglers and human traffickers and share such information with the appropriate law enforcement and intelligence agencies
- Promote research on migrant smuggling and human trafficking networks and financial flows linked to them

IV. Conclusions

The fifth informal thematic session in phase I (consultations) of the preparatory process leading to the adoption of the global compact for safe, orderly and regular migration was a valuable opportunity to address the complex phenomena of migrant smuggling, human trafficking and contemporary forms of slavery and exploitation. The discussions highlighted the existing legal frameworks at the international level, particularly the United Nations Convention against Transnational Organized Crime (UNTOC) and the relevant two Protocols thereto. Nevertheless, discussions revealed that ratification of the Convention and relevant two Protocols thereto does not always translate into effective implementation. The various lacunae in implementation were highlighted, along with a generalized willingness to use the global compact as a vehicle to enhance international cooperation to combat human trafficking and migrant smuggling.

One of the major areas of discussion related to the distinctions, nuances and similarities between the phenomena of smuggling of migrants and trafficking in persons. Narratives surrounding the phenomena are important factors that shape perceptions and, in turn, can inform public policy. The similarities and differences between these two led Member States to emphasize their desire to obtain a better understanding of both concepts while ensuring that definitions do not detract from protection and assistance of trafficking victims and smuggled migrants in vulnerable situations. Indeed, several participants noted the importance of upholding the legal distinction between trafficking in persons and migrant smuggling, while recognizing that in practice, trafficking and smuggling can overlap as smuggled migrants may be exposed to abuse and exploitation, including through forced labour, extortion and sexual enslavement. The issue of exploitation in migration was identified by the thematic expert as the common link between these two concepts. Other aspects of the discussion that require further dialogue include the treatment, protection and assistance that smuggled migrants should receive vis-à-vis victims of trafficking, potential links to terrorism, and the utility of the concept of “contemporary forms of slavery” for policy-making.

It was undisputed that Member States have a sovereign right to determine which non-nationals may enter and stay within their territory and to manage migration under national policies. It was equally acknowledged that no State can effectively address international migration on its own, and that greater international cooperation and partnerships are needed in order to implement existing frameworks to combat migrant smuggling and human trafficking. In this regard, it was noted that the Smuggling Protocol is the starting point for international cooperation on migrant smuggling, and can continue to offer a framework for strengthened collaborative work. Nevertheless, the need for a human rights-based approach in addressing migrant smuggling requires that migrants are not criminalized for using the services of smugglers, alongside the acknowledgement of the fact that many people are compelled to use smuggling services to seek humanitarian protection abroad, including from persecution or conflict. Such sensitivity was not, however, generally interpreted as a call for decriminalization of the act of smuggling, but rather for better targeting the smuggler vis-a-vis the migrant.

Multiple best practices were shared from the national, regional and international levels. It was noted that these tended to be multidisciplinary and multi-stakeholder in nature when addressing trafficking in persons and smuggling of migrants. The crucial role of non-governmental stakeholders, such as civil society organizations and the private sector in supporting States to fulfill their obligations to address human trafficking and migrant smuggling, notably through assisting in identification procedures as well as providing protection and assistance to migrants, was particularly underlined. This was also joined with several calls for child and gender-sensitivity in the context of the full respect for human rights, the principle of “do no harm” and the implementation of the 2030 Agenda for Sustainable Development, including the goals and targets relevant to migration and trafficking.

ANNEX – Programme of work

Day 1: Monday, 4 September 2017

Time	Concept
10.00-10.15	<p>Opening segment</p> <p>Welcoming remarks by the co-facilitators</p> <ul style="list-style-type: none"> ▪ H.E. Mr. Juan José Gómez Camacho, Permanent Representative of Mexico to the United Nations ▪ H.E. Mr. Jürg Lauber, Permanent Representative of Switzerland to the United Nations <p>Remarks by Ms. Louise Arbour, Secretary-General of the intergovernmental conference</p>
10.15-13.00	<p>PANEL 1: Smuggling of migrants</p> <p>This panel will examine actions taken and gaps in responses to the smuggling of migrants. Panelists will discuss: implementation of the definition of smuggling of migrants and the related obligations and commitments at international law; the range of stakeholders involved in investigating and prosecuting criminal actors, preventing smuggling of migrants and assisting and protecting smuggled migrants; national and cross-border coordination and cooperation, including between State and non-State actors; the challenges and opportunities of a framework seeking to both combat the smuggling of migrants and protect the rights of smuggled migrants; and the preventive impact of measures such as the availability of pathways for regular migration, or coordinated cross-border action against transnational smuggling networks.</p> <ul style="list-style-type: none"> ▪ Ms. Gabriella E. Sanchez, Senior Research Fellow, Migration Policy Centre, European University Institute ▪ Mr. Mark Shaw, Director, Global Initiative against Transnational Organized Crime ▪ Mr. Jorgen Carling, Research Professor, Peace Research Institute Oslo (PRIO) <p><u>Moderator:</u> H.E. Mr. Rafael Mariano Grossi, Ambassador of Argentina to Austria and Permanent Representative to International Organisations in Vienna</p>
13.00-15.00	<p>Lunch</p> <p>Space for side-events</p>
15.00-18.00	<p>PANEL 2: Trafficking in persons and contemporary forms of slavery</p> <p>This panel will explore the crime of human trafficking including for sexual exploitation, forced labor, servitude and slavery, and related exploitative practices. This panel will examine actions taken and gaps in responses to trafficking in persons. Panelists will discuss: implementation of the definition of trafficking in persons and the related obligations and commitments at international law; the range of stakeholders involved in investigating and prosecuting criminal actors, preventing trafficking in persons and protecting its victims; national and crossborder coordination and cooperation, including between State and non-State actors; the challenges and opportunities of a framework seeking to both combat trafficking in persons and protect the rights of trafficking victims; and the preventive impact of measures such as risk assessment of re-victimization or re-trafficking in developing counter-trafficking responses, or initiatives to address exploitative labor practices within supply chains, or consumer-based action against products or services resulting from trafficked labor.</p> <ul style="list-style-type: none"> ▪ Ms. Anne T. Gallagher, Academic Adviser, Doughty St Chambers

	<ul style="list-style-type: none"> ▪ Ms. Gulnara Shahinyan, Expert on slavery and trafficking in persons and founder and chair of Democracy Today ▪ Mr. Mohamed Y. Mattar, Clinical Professor of Law and Director of the Law Clinic, Qatar University College of Law <p>Moderators: H.E. Ms. Elisabeth Tichy-Fisslberger, Director General for Legal and Consular Affairs at the Federal Ministry for Europe, Integration and Foreign Affairs of Austria, and H.E. Mr. Andrew Goledzinowski, Ambassador for People Smuggling and Human Trafficking for Australia</p>
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Day 2: Tuesday, 5 September 2017

Time	Concept	
10.00-13.00	<p>PANEL 3: Appropriate identification, protection, and assistance to migrants and trafficking victims</p> <p>This panel will examine concrete measures undertaken to enhance protection and assistance of trafficking victims and smuggled migrants, as migrants in vulnerable situations. The panel would focus in particular on issues of (a) identification and referral, such as ensuring an adequate capacity amongst all relevant actors and the availability of information and related resources to migrants regarding rights, access and the extent of various forms of assistance and support; (b) protection, such as ensuring the non-criminalisation of trafficked persons and smuggled migrants, or that specialised responses are linked with a broader protection framework including child protection and asylum procedures, and (c) assistance, including that access to support measures is not made conditional upon cooperation with State criminal justice authorities. The panel will provide examples of tools, highlight specific forms of protection and assistance and the roles of various actors.</p> <ul style="list-style-type: none"> ▪ Ms. Maria Grazia Giammarinaro, Judge and Special Rapporteur on trafficking in persons, especially women and children ▪ Ms. Bandana Pattanaik, International Coordinator, Global Alliance Against Trafficking in Women (GAATW) ▪ Ms. Hassiba Hadj Sabraoui, Humanitarian Affairs Advisor, Médecins Sans Frontières (MSF) <p>Moderators: H.E. Mr. Leigh Turner, Permanent Representative of the United Kingdom to the United Nations in Vienna, and H.E. Ms. Stefanie Amadeo, Deputy Representative to ECOSOC, United States Mission to the United Nations</p>	
13.00-15.00	Lunch	Space for side-events
15.00-17.50	<p>SUMMARY PANEL: Synopsis of the main conclusions and outcomes</p> <ul style="list-style-type: none"> ▪ Moderators present the key recommendations resulting from their panels ▪ Ms. Joy Ngozi Ezeilo, Professor of Law, Department of Public Law, Faculty of Law, University of Nigeria, thematic expert provides a short overview of the main discussions and the interlinkages between the panels ▪ Interactive exchange between the moderators, the thematic expert and Member States on the outcomes of the session 	
17.50-18.00	Closing remarks by the co-facilitators	