



## General Assembly

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### **Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime**

Fifth session

Vienna, 4-15 October 1999

Agenda item 5

**Adoption of the report of the Ad Hoc Committee on its fifth session**

### **Draft report**

#### **Addendum**

*Rapporteur:* Peter **Gastrow** (South Africa)

### **Report of the informal consultations on the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime and the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime**

#### **Informal consultation on the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime**

1. At the informal consultation on the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime, held from 4 to 6 October 1999, the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime discussed articles 2-4 of the revised version of the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.1/Rev.2). The discussion of articles 5 and 6 of the draft Protocol was

postponed pending the discussion of the draft Convention relating to the subjects dealt with in those articles.

2. The recommendations of the informal consultation will be reflected in a revised version of the draft Protocol.<sup>1</sup>

### **Article 2: Definitions**

3. The discussion on article 2, subparagraph 1 (a), focused on whether the words “illegal residence” and “profit” should be deleted or retained. If those words would be deleted from the text, subparagraphs (c) and (d) of paragraph 1 would also be deleted.

4. With regard to subparagraph 1 (b), there were three positions concerning the words “illegal entry”. The delegation of Mexico suggested replacing the words “illegal entry” by the words “irregular or non-documented entry”. The delegation of the United States of America suggested replacing the word “illegal” by the word “irregular”, while other delegations expressed their concern that the word “irregular” did not cover all forms of “illegal” conduct.

5. The discussion on subparagraphs 1 (e) and (g) was postponed.

6. There was a convergence of views regarding subparagraph 1 (f); however, some delegations expressed concern about the exact meaning of the term “vehicle”.

7. With regard to paragraph 2, several delegations proposed to discuss the paragraph later, when article 4, on criminalization, and article 6, on jurisdiction, would be discussed or to move the paragraph to those articles.

### **Article 3: Purposes**

8. The discussion on article 3 focused on whether to remove the brackets from subparagraph (a). It was decided to retain the brackets and add the following text, as proposed by the United States: “when involving an organized criminal group as defined in the Convention”.

9. Regarding subparagraph (b) of article 3, some delegations preferred to add the words “as well as to protect the victims of such smuggling, including their human rights”, while others were of the view that human rights should be covered in article 5.

### **Article 4: Criminalization**

10. With regard to article 4, paragraph 1, many delegations agreed on the proposal submitted by Canada and the United States (A/AC.254/L.76), except for certain wording such as “international travel” in subparagraph (b) (i), “possessing” and “involved” in subparagraph (b) (ii) and “acting on” in subparagraph (b) (iii). In addition, there was a discussion on whether the words “organized criminal group” should be in brackets. Some delegations preferred a proposal by the Russian Federation that read “States Parties that have not yet done so shall adopt the necessary legislation or other measures to establish as criminal offences the activities of organized criminal groups relating to the organization, procuring and actual effectuation of the smuggling of migrants”, while the delegation of Mexico strongly suggested retaining option 1 of article 4.

11. With regard to paragraph 3, there was a convergence of views on subparagraphs (a), (b) and (c). Many delegations were of the view that subparagraph (d) needed to be clarified.

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<sup>1</sup> To be issued subsequently as document A/AC.254/4/Add.1/Rev.3.

12. There was no objection to paragraph 4.
13. With regard to paragraph 5 (and 6), most delegations preferred option 2, while the delegation of the Syrian Arab Republic strongly suggested adding the words “and smuggling of” after the word “treatment” in subparagraph 5 (b) of option 2.
14. Regarding paragraph 7, there was consensus that migrants were victims and should therefore not be criminalized. It was also agreed, however, that migrants should not be given full immunity. Many delegations supported the proposal submitted by France (A/AC.254/L.77); however, several delegations were concerned about the clarity of the words “other activities” in that proposal.
15. Some delegations supported a proposal submitted by Morocco (A/AC.254/L.60), in which new text was introduced as paragraph 8 of article 4 or a new article 4 *bis*. Others opposed the proposal.

### **Informal consultation on the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime**

16. In an informal consultation held from 6 to 8 October 1999, the Ad Hoc Committee at its fifth session discussed the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (A/AC.254/4/Add.3/Rev.4.)
17. Articles 1 and 2 of the draft Protocol were discussed. It was agreed to add new article 2 *bis*, on definitions. Consensus was reached on deferring the discussion on article 3 until the discussion on articles 2 and 2 *bis* had been concluded. The majority supported recommending to the plenary the use of a proposal made by Belgium, Poland and the United States to restructure the draft Protocol (A/AC.254/5/Add.13) as a basis for further discussion of the draft Protocol.
18. The recommendations of the informal consultation will be reflected in a revised version of the draft Protocol.<sup>2</sup>

#### **Article 1: Purpose**

19. Option 1 was considered preferable as the basis for the discussion, although some delegations expressed the view that the first paragraphs of the two options should be merged. Consensus was reached on inserting the word “particularly” in front of the words “for the purpose of” in order to broaden the purpose of the Protocol, so that it would be applicable to forms of exploitation other than forced labour or sexual exploitation.
20. There were several suggestions to replace the word “punish” with the word “prosecute” or “combat”; or, alternatively, to add the word “prosecute” in front of the word “punish”.
21. The discussion on article 1, paragraph 2, was postponed until the rest of the draft Protocol was discussed.

<sup>2</sup> To be issued subsequently as document A/AC.254/4/Add.3/Rev.4.

## **Article 2: Scope of application**

22. Consensus was reached on using option 1 of article 2 as the basis for discussion. There was no comment on paragraph 1.

23. Regarding paragraph 2, it was agreed to replace the phrase “for the purpose of sexual exploitation or forced labour” with the phrase “with the aim of submitting them to any form of exploitation, as specified in article [...]”, which would be put in brackets.

24. It was agreed to replace the word “kidnapping” with the word “abduction” and to insert the word “international” in brackets in front of the word “trafficking”. Some delegations suggested that the term “international trafficking” should be defined.

25. Furthermore, it was agreed to add footnotes on the following:

(a) The suggestion to move the definition of “trafficking in persons” to new article 2 *bis*, on definitions;

(b) The suggestion to add the words “especially women and children” after the word “persons” every time it appeared in the text, as indicated in footnote 2 of the draft Protocol contained in document A/AC.254/4/Add.3/Rev.3;

(c) The suggestion by some delegations to insert the words “debt bondage” in the text.

26. Regarding paragraph 3 of article 2, consensus was reached on replacing the phrase “under the age of consent in the jurisdiction where the offence occurs” with the phrase “under eighteen years of age”.

27. As the majority of the delegations had expressed the view that the scope of paragraph 3 should not be limited to “sexual exploitation”, it was agreed that the words “sexual exploitation” would be placed in brackets, to be changed at a later stage.

## **Article 2 *bis*: Definitions**

28. It was agreed to use the proposal submitted by the United States (A/AC.254/L.54) as the basis for the discussion on definitions.

### *“Sexual exploitation”*

29. Regarding the definition of “sexual exploitation”, consensus was reached on replacing the word “voluntarily” with the words “with free and informed consent” in subparagraph (a).

30. Also in subparagraph (a), it was decided to place the word “forced” in brackets before the word “prostitution” with a footnote explaining that there were opposing views on whether the word “forced” should be included.

31. Regarding subparagraph (b), it was agreed to replace the word “participation in the production of pornographic materials” by the words “use of a child in pornography”.

32. It was also agreed to insert a footnote on whether “paedophilia” was covered under “sexual servitude”, making reference to the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

### *“Forced labour”*

33. Regarding the definition of “forced labour”, the majority of the delegations suggested inserting the phrase “for the purpose of this Protocol” at the beginning of the sentence.

34. It was agreed to place the words “or coercion” in brackets after the words “use of force” and to add a footnote indicating that several delegations had expressed the desire to consider the wording further.

*Suggestions concerning other terms*

35. The majority of the delegations suggested keeping the definitions general, defining the term “trafficking in persons” rather than the term “trafficking in children” or the term “trafficking in women”. It was suggested by several delegations that the more specific terms could be defined at a later stage, if necessary.

36. Several delegations suggested defining the term “child” in this article. Delegations were invited to suggest additional definitions to be included in this article.

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