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

Ninth session

Vienna, 5-16 June 2000

Agenda item 3

**Consideration of the additional international legal instrument  
against trafficking in persons, especially women and children**

**Proposed amendments 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, submitted by the Secretariat at the request of the  
Chairperson**

*Article 3*

*Obligation to criminalize<sup>1</sup>*

1. States Parties shall adopt such measures as may be necessary to establish as criminal offences under their domestic law the conduct set forth in article 2 *bis*<sup>2</sup> of this Protocol and shall impose penalties that take into account the grave nature of those offences.

2. States Parties shall also adopt such measures as may be necessary to establish as criminal offences under their domestic law the following conduct {, when committed

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\* Reissued for technical reasons.

<sup>1</sup> At the fourth session of the Ad Hoc Committee, several delegations suggested that this article should be consistent with the relevant articles of the draft Convention and in the draft Migrants Protocol.

<sup>2</sup> At the informal consultations held during the seventh session of the Ad Hoc Committee, there was general agreement on deleting the brackets throughout the text of this article.

intentionally,}<sup>3</sup> and shall impose penalties that take into account the grave nature of those offences:<sup>4</sup>

(a) Attempting to commit an offence set forth in article 2 *bis* of this Protocol;  
{and,}

(b) {Participating in,} organizing, directing, aiding, abetting, facilitating, or counselling the commission of an offence set forth in article 2 *bis* of this Protocol;<sup>5</sup> {; and,}

Option 1: (Delete former subparagraph (d), leaving no text)

Option 2: (Cross reference to Convention Article 3, subparagraph (1)(a). To address the concerns of some delegations, this wording is limited to avoid the obligation to criminalise conspiracy to commit Protocol crimes which are not already “serious crimes” as defined in the Convention.)

(c) In the case of an offence set forth in Article 2 *bis* of this Protocol which is punishable by a maximum deprivation of liberty of at least four years or a more serious penalty, the conduct set out in Article 3, paragraph 1(a) of the Convention.<sup>6</sup>

Option 3: (Replace (d) with an adapted version of Convention Article 3(1)(a))<sup>7</sup>

(d) Either or both of the following as distinct from criminal offences involving the attempt or completion of the criminal activity:

(i) Agreeing with one or more other persons to commit an offence set forth in article 2 *bis* of this Protocol for any purpose relating directly or indirectly to the obtaining of a financial or other material benefit and, where required by domestic law, involving an act undertaken by one of the participants in furtherance of the agreement or involving an organized criminal group;

(ii) Conduct by a person who, with knowledge of either the aim and general criminal activity of an organized criminal group or its intention to commit the crimes in question, takes active part in:

a. Criminal activities of an organized criminal group as defined in article 2 *bis* of the Convention, where any of such activities constitute an offence set forth in article 2 *bis* of this Protocol;

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<sup>3</sup> Proposal of Australia, corresponds to wording of Convention, Article 3(1).

<sup>4</sup> At the informal consultations held during the seventh session of the Ad Hoc Committee, it was recommended that further discussion of paragraphs 2 and 3 of this article should be deferred pending finalization of the corresponding provisions of the draft Convention.

<sup>5</sup> Proposal of the United States. New text is based on Convention, Article 3, paragraph 1, sub-paragraph (b) with the words “Participating in” added from Convention subparagraph 4(1)(d). Text replaces former subparagraphs (b) and (c).

<sup>6</sup> The words “...which is punishable by a maximum deprivation of liberty of at least four years or a more serious penalty...” correspond to the definition of “serious crime” in Article 2 *bis*, paragraph (b) of the Convention. This means that the effect is to require States Parties to criminalise conspiracies only if the crime is a “serious crime”. Arguably, they are already obliged to do this under Convention Article 3.

<sup>7</sup> Text based on revised draft Convention, A/AC.254/4/Rev.8, Article 3, paragraph 1(a). Underlined text indicates modifications to limit the application of the provision to Protocol offences. Note that this would require States Parties to criminalise conspiracy to commit all Protocol offences, regardless of the maximum length of sentence which could be imposed on offenders.

b. Other activities of the group in the knowledge that his or her participation will contribute to the achievement of the above-described criminal aim.

Option 4: (Retain existing subparagraph (d))

(d) In any other way contributing to the commission, by a group of persons acting with a common purpose, of an offence set forth in article 2 *bis* of this Protocol; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or criminal purpose of the group or be made in the knowledge of the intention of the group to commit the offence concerned.

3. The knowledge, intent or purpose required to commit an offence set forth in article 2 *bis* of this Protocol may be inferred from objective factual circumstances.<sup>8</sup>

**Supplementary note: possible text of new Article establishing the link between the Protocol and the Convention.**

*Article 14*

*Relation with Convention*<sup>9</sup>

1. This Protocol is supplementary to the United Nations Convention against Transnational Organized Crime.

2. No State shall become a Party to this Protocol unless it also becomes a Party to that Convention.

3. The provisions of [Articles ...of] the Convention shall also apply, *mutatis mutandis*, to this Protocol.

<sup>8</sup> At the fourth session of the Ad Hoc Committee, some delegations suggested that this subparagraph should be deleted, while others stated that it should be retained as the wording was used in the 1988 Convention.

<sup>9</sup> Possible text of new Article 14 linking Protocol and Convention, based on ongoing discussions of Convention Article 26 *bis*. Text is based on these discussions, as well as existing texts of Protocol Article 14 and Convention Article 26 *bis*. If adopted, similar text would become a new Article 15 *ter* of the Protocol against the smuggling of migrants.