



# General Assembly

Distr.: Limited  
15 June 2000

Original: English

---

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

Ninth session

Vienna, 5-16 June 2000

### **Revised draft Protocol against the Smuggling<sup>1</sup> of Migrants by Land, Air and Sea,<sup>2</sup> supplementing the United Nations Convention against Transnational Organized Crime<sup>3, 4</sup>**

*[The preamble and chapter I (articles 1-6) were not discussed.]*

---

<sup>1</sup> The term “smuggling” is used throughout the text in the light of action taken by the General Assembly at its fifty-fourth session on the recommendation of the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council. During the discussion at the first session of the Ad Hoc Committee, several delegations raised the issue of the translation of the term “smuggling” into languages other than English and the problems that it created. Attention will, therefore, be paid to identifying the appropriate term to be used in languages other than English. That will be done in the glossary of terms that the Secretariat is currently preparing. Existing texts on the subject, such as General Assembly resolutions 48/102 of 20 December 1993 and 51/62 of 12 December 1996 and Economic and Social Council resolution 1995/10 of 24 July 1995, might be useful in this regard. The Ad Hoc Committee will reconsider this matter at a future session. When agreement is reached on the wording of the title, the terminology will be adjusted in provisions throughout the text, as necessary.

<sup>2</sup> In its resolution 53/111 of 9 December 1999, the General Assembly requested the Ad Hoc Committee to discuss the elaboration of an international instrument addressing illegal trafficking in and transporting of migrants, including by sea. The Ad Hoc Committee at its first session was of the view that focusing on illegal trafficking and transporting by sea would be too restrictive.

<sup>3</sup> The text of the draft Protocol is based on the original proposal of Austria and Italy (A/AC.254/4/Add.1), with subsequent modifications as noted.

<sup>4</sup> At the sixth session of the Ad Hoc Committee, it was noted during the deliberations on the draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the “Trafficking in Persons Protocol”) that the words “each State Party” and “States Parties” were used interchangeably in the text. The Committee decided to adopt the term “States Parties” throughout the text. For consistency, the same change has been made here, where possible.

## II. Smuggling<sup>5</sup> of migrants by sea<sup>6</sup>

### Article 7

#### *Cooperation and mutual assistance*

States Parties shall cooperate to the fullest extent possible to prevent and suppress the smuggling of migrants by sea, in conformity with the international law of the sea.<sup>7</sup>

[Paragraph 2 of article 7 was moved to become paragraph 1 of article 7 bis and the subsequent paragraphs of article 7 bis were renumbered accordingly.]

### Article 7 bis

#### *Measures against the smuggling of migrants by sea*

1. A State Party that has reasonable grounds to suspect that a vessel, which is flying its flag or claiming its registry, which is without nationality or which, though flying a foreign flag or refusing to show a flag, is in reality of the nationality of the State Party concerned, is engaged<sup>8</sup> in the smuggling of migrants by sea may request the assistance of

---

<sup>5</sup> Concerns about the use of the term “smuggling” are discussed in the footnote to the word in the title of the draft Protocol (footnote 1).

<sup>6</sup> In the version of the draft Protocol contained in document A/AC.254/4/Add.1/Rev.2, this chapter included only one article (article 7). For the sake of clarity, the delegations of Austria and Italy proposed the structure followed in the present version. At the eighth session of the Ad Hoc Committee, time did not permit discussion of chapter II. It was noted that, unlike other elements of the draft Protocols to the draft Convention, these articles required the participation of delegates with specific expertise in maritime law. In order to facilitate their attendance, it was decided that these articles would be reviewed at the beginning of the next session of the Ad Hoc Committee at which the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea was scheduled for consideration.

<sup>7</sup> The language of this provision is derived from article 17, paragraph 1, of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (the “1988 Convention”) and from paragraph 8 of the interim measures for combating unsafe practices associated with the trafficking or transport of migrants by sea of the International Maritime Organization (IMO) (MSC/Circ.896). At the sixth session of the Ad Hoc Committee, it was decided to use a general reference to international law to include both customary and conventional international law as opposed to listing specific instruments. Not all States were parties to some instruments and a list might be interpreted as excluding any instruments not listed. The wording was changed to refer specifically to “the international law of the sea” at the recommendation of the informal consultations held during the ninth session. The informal consultations held during the ninth session also recommended that the United Nations Convention on the Law of the Sea be mentioned specifically in the *travaux préparatoires*.

<sup>8</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, it was proposed that the word “engaged” should be replaced with the word “involved”, which some delegations felt would include vessels less directly involved in smuggling. The words “taking part in” and “participating in” were also considered, but there was no consensus to change the text. The Chairman asked the delegations concerned to propose suitable terminology for the next session at which the draft Protocol would be discussed. Consideration would then be given to adopting consistent language where that terminology appeared. References to “vessels...engaged...in smuggling” occur in article 7 bis, paragraphs 1, 2 (in the chapeau and in subparagraph (c)) and 7, and in article 7 ter, paragraphs 1 and 2. References to criminal groups “engaged... in...smuggling” also occur in article 10, paragraph 3, subparagraphs (a), (b) and (c).

other States Parties in suppressing the use of the vessel for that purpose. The States Parties so requested shall render such assistance within the means available to them.<sup>9, 10, 11</sup>

2. A State Party that has reasonable grounds to suspect that a vessel exercising freedom of navigation in accordance with international law and flying the flag or displaying marks of registry of another State Party is engaged<sup>12</sup> in the smuggling of migrants may so notify the flag State, request confirmation of registry and, if confirmed, request authorization from the flag State to take appropriate measures with regard to that vessel.<sup>13</sup> The flag State may authorize the requesting State, *inter alia*:

- (a) To board the vessel;<sup>14</sup>
- (b) To search<sup>15</sup> the vessel; and
- (c) If evidence is found that the vessel is engaged<sup>16</sup> in the smuggling of migrants, to take appropriate measures with respect to the vessel, persons and cargo<sup>17</sup> on board, as

<sup>9</sup> The language of this provision is derived from article 17, paragraph 2, of the 1988 Convention and from paragraph 11 of the IMO interim measures. During the sixth session of the Ad Hoc Committee, it was decided to replace the words “as is reasonable under the circumstances” with the words “within the means available to them”, to bring the language closer to article 17, paragraph 2, of the 1988 Convention.

<sup>10</sup> At the sixth session of the Ad Hoc Committee, some delegations proposed moving this provision from article 7 to article 7 *bis* and the informal consultations held during the ninth session recommended that this be done.

<sup>11</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, two delegations were concerned that problems might arise when the assistance of third-party States was requested by a State in the belief that it was the flag State and had the right to authorize them to take action. If the belief was mistaken, the assisting States could be in breach of international law.

<sup>12</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations proposed replacing the word “engaged” with the word “involved”. See the footnotes to article 7 *bis*, paragraph 1, above.

<sup>13</sup> The language of this provision is derived from article 17, paragraph 3, of the 1988 Convention. The delegation of Denmark raised a reservation to this provision, indicating that, as a matter of Danish constitutional law, it could not expressly authorize another State to search a ship of Danish nationality or registry. It indicated that it could, however, undertake not to pursue any claims under Danish or international law against another State that took such action of its own accord, provided that such action was consistent with the Protocol.

<sup>14</sup> At the sixth session of the Ad Hoc Committee, several delegations expressed concern about the exact meaning of the word “board” and its translation into other languages. At issue was the extent to which use of the term would authorize the boarding of a vessel against the will of the person in charge of it. The word “board” appears in both the 1988 Convention and the IMO interim measures.

<sup>15</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, there was discussion about whether the word “inspect” or the word “search” was more appropriate here. Some delegations preferred an inspection power, as being broader and less intrusive, whereas others preferred the term “search” as being more suitable for the examination of a vessel believed to be engaged in criminal smuggling activities. One proposal raised was the use of the words “search or inspect” or the equivalent in all languages. Several delegations proposed the use of language matching article 17, paragraph 4, of the 1988 Convention; however, it was noted that while the English text of that instrument used the term “search”, the French and Spanish texts used words more closely corresponding to “inspection” in those languages. The Secretariat was requested to consult the United Nations translators and editors for recommended terminology that would be consistent in all languages. Some delegations, including the delegation of the Islamic Republic of Iran, requested that their preference for the word “inspection” in English be noted.

<sup>16</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations proposed replacing the word “engaged” with the word “involved”. See the footnotes to article 7 *bis*, paragraph 1, above.

<sup>17</sup> At the sixth session of the Ad Hoc Committee, several delegations expressed concern about the reference to “persons and cargo” in this context.

[expressly]<sup>18</sup> authorized by the flag State [in accordance with article 7 *ter* of this Protocol].<sup>19, 20</sup>

3. A State Party that has taken any measure in accordance with paragraph 1 of this article shall promptly inform the flag State concerned of the results of that measure.<sup>21</sup>

4. A State Party shall respond expeditiously<sup>22</sup> to a request from another State Party to determine whether a vessel that is claiming its registry or flying its flag is entitled to do so and to a request for authorization made pursuant to paragraph 1 of this article.<sup>23</sup>

5. A flag State may, consistent with article 7<sup>24</sup> of this Protocol, subject its authorization to conditions to be agreed by it and the requesting State, including conditions relating to responsibility and the extent of effective measures to be taken.<sup>25</sup> A State Party shall take no additional measures without the express authorization of the flag State, except those necessary to relieve imminent danger to the lives of persons<sup>26</sup> or those which follow from relevant bilateral or multilateral agreements.<sup>27</sup>

---

<sup>18</sup> At the sixth session of the Ad Hoc Committee, several delegations proposed that the word “explicitly” or the word “expressly” be added at this point for greater clarity. Other delegations expressed reservations about the possible effect on domestic law.

<sup>19</sup> Compromise text proposed by the Chairperson at the sixth session of the Ad Hoc Committee in response to the proposal of a number of delegations that a cross-reference to the safeguard provisions of article 7 *ter*, paragraph 3 (a), be added to this article.

<sup>20</sup> The language of this provision is derived from article 17, paragraph 4, of the 1988 Convention.

<sup>21</sup> The language of this provision is derived from article 17, paragraph 8, of the 1988 Convention and from paragraph 12 of the IMO interim measures.

<sup>22</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, one delegation suggested replacing the word “expeditiously” with the words “as soon as possible” or “as quickly as possible”. It was noted that the same issue arose in subparagraph 6 (b) of this article, where there was a proposal to replace the words “as quickly as possible” with the word “expeditiously”.

<sup>23</sup> The language of this provision is derived from article 17, paragraph 7, of the 1988 Convention and from paragraph 14 of the IMO interim measures.

<sup>24</sup> The informal consultations held during the ninth session of the Ad Hoc Committee recommended replacing the former reference to article 7, paragraph 1, with a reference to article 7 only, as a consequence of its recommendation to move former article 7, paragraph 2, to article 7 *bis*.

<sup>25</sup> At the sixth session of the Ad Hoc Committee, a number of delegations expressed concern that the words “the use of force” in this provision might be interpreted as an authorization or encouragement to use force. At the informal consultations held during the ninth session of the Ad Hoc Committee, it was agreed to recommend deleting these words.

<sup>26</sup> At the sixth session of the Ad Hoc Committee, many delegations expressed the view that the words “imminent danger” were too broad and required clarification. Some delegations sought clarification that the danger referred to was “to life”. Others expressed a preference for limiting this provision to cases where there was danger to the lives of migrants. Others pointed out that cases could arise where the lives of crew members or boarding parties exercising their powers under paragraph 1 (a) might be endangered and that the wording should provide for this. At the informal consultations held during the ninth session of the Ad Hoc Committee, it was agreed to recommend removing the brackets from the words “to the lives or safety of persons” and to delete the words “or safety” from that phrase.

<sup>27</sup> The language of this provision is derived from paragraph 13 of the IMO interim measures and article 17, paragraph 6, of the 1988 Convention.

6. States Parties shall designate an authority or, where necessary, authorities<sup>28</sup> to receive and respond as quickly as possible<sup>29</sup> to requests for assistance, confirmation of registry or of the right of a vessel to fly their flags and authorization to take appropriate measures.<sup>30</sup> Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.<sup>31</sup>

7. A State Party that has reasonable grounds<sup>32</sup> to suspect that a vessel is engaged<sup>33</sup> in the smuggling of migrants by sea and is without nationality<sup>34</sup> or may be assimilated to a vessel without nationality, may board and search the vessel.<sup>35</sup> If evidence confirming the

<sup>28</sup> This text was revised at the sixth session of the Ad Hoc Committee to address the concerns of some delegations that two separate authorities might be needed. The delegation of Spain proposed that the words “an authority, or where necessary, authorities” be replaced with the words “a central authority, or where necessary, central authorities”. At the informal consultations held during the ninth session of the Ad Hoc Committee, it was noted that the corresponding reference in article 14, paragraph 13, of the draft Convention had also not been finalized on this question. Most delegations felt that the two instruments should be made consistent on this point, once language had been adopted in the Convention, but some delegations noted that there might be some need for different language in the Protocol since the authorities dealing with maritime matters might not be the same as those dealing with requests for mutual legal assistance in general under the Convention itself.

<sup>29</sup> The informal consultations held during the ninth session of the Ad Hoc Committee recommended deletion of the words “as quickly as possible”. The concerns of one delegation about the use of the term “expeditiously” in paragraph 4 of this article were also noted with respect to this change.

<sup>30</sup> The language of this provision is derived from article 17, paragraph 7, of the 1988 Convention and from paragraph 21 of the IMO interim measures.

<sup>31</sup> Pursuant to a proposal of the United States of America (A/AC.254/L.195), the informal consultations held during the ninth session of the Ad Hoc Committee recommended the addition of the following words: “Such designation shall be notified through the Secretary-General to all other States Parties within one month of the designation.”

<sup>32</sup> At the sixth session of the Ad Hoc Committee, concerns were expressed about the standard set by the language of the Spanish text. It was agreed that this would be made to match the English-language standard of “reasonable grounds”. Similar changes would be made in the glossary being prepared by the Secretariat if necessary. The informal consultations held during the ninth session of the Ad Hoc Committee recommended replacing the words “When there are reasonable grounds” at the beginning of this provision with the words “A State Party that has reasonable grounds”. One delegation expressed concern that this might make the assessment of “reasonable grounds” a subjective matter for the State involved. Other delegations pointed out that, since the provision dealt only with the boarding of a stateless vessel, only one State would be in a position to make this determination in any event.

<sup>33</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations proposed replacing the word “engaged” with the word “involved”. (See the footnotes to article 7 *bis*, paragraph 1, above.)

<sup>34</sup> The informal consultations held during the ninth session of the Ad Hoc Committee recommended deleting wording that would have determined the nationality of the vessel “in accordance with the law of the sea” as unnecessary (see A/AC.254/4/Add.1/Rev.5). One delegation opposed the deletion on the basis that the additional words “in accordance with the law of the sea” provided greater certainty.

<sup>35</sup> At the sixth session of the Ad Hoc Committee, to respond to concerns about the meaning of “to board” in various languages, the wording was changed to read “to board and inspect”. The informal consultations held during the ninth session of the Ad Hoc Committee recommended revising this sentence by replacing the words “shall board” with the words “may board” and consequently deleting the words “as necessary”, and by replacing the word “inspect” with the word “search”, subject to the concerns about language concordance noted with respect to subparagraph 2 (b) of this article. The delegation of the Islamic Republic of Iran requested that its preference for the term “inspect” be noted at this point.

suspicion is found, that State Party<sup>36</sup> shall take appropriate measures<sup>37</sup> in accordance with relevant domestic and international law.<sup>38, 39</sup>

*Article 7 ter*  
*Safeguard clauses*

1. Where a State Party takes measures against a vessel in accordance with article 7 *bis* of this Protocol, that State Party shall:<sup>40</sup>

- (a) Ensure the safety<sup>41</sup> and humane treatment of the persons on board;
- (b) Take due account of the need not to endanger the security of the vessel or its cargo;
- (c) Take due account of the need not to prejudice the commercial or legal interests of the flag State or any other interested State;
- (d) Ensure, within available means, that any measure taken with regard to the vessel is environmentally sound.

2. [Deleted]<sup>42</sup>

3. Where measures taken pursuant to this Protocol prove to be unfounded, the vessel shall be compensated for any loss or damage that may have been sustained, provided that the vessel has not committed any act justifying the measures taken.<sup>43</sup>

---

<sup>36</sup> This proposal was made by the delegation of Australia at the informal consultations held during the ninth session of the Ad Hoc Committee.

<sup>37</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, it was noted that the words “measures” and “action” appeared interchangeably in this context throughout the Protocol. It was recommended that the term “measures” be used throughout and the Secretariat was requested to make the substitution, subject to subsequent approval by the Ad Hoc Committee. Other such substitutions were made in article 7 *bis*, subparagraph 2 (c), and paragraphs 3 and 5, and in article 7 *ter*, paragraphs 5 and 6.

<sup>38</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, it was recommended to amend this provision based on the proposal submitted by the United States (A/AC.254/L.195). The original language of this provision is derived from paragraph 16 of the IMO interim measures.

<sup>39</sup> At the sixth session of the Ad Hoc Committee, it was noted that the substance of this provision overlapped that of article 14, paragraph 8 (on appointment of central authorities for mutual legal assistance), of the draft Convention and should therefore be re-examined once that provision had been finalized.

<sup>40</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, there was lengthy discussion of former paragraphs 1 and 2 of this article as contained in document A/AC.254/4/Add.1/Rev.5. The consultations recommended replacement of those paragraphs with this text, based on the proposal of Australia. One delegation sought several further changes to the text to make the requirements of subparagraphs (b) and (c) more mandatory and to safeguard the commercial or legal interests of third parties that were not States. It proposed that: the words “domestic and international law” be added after the word “Protocol”; that subparagraph (b) be replaced with the words “ensure that the security of the vessel or its cargo is not endangered”; that the words “take due account” in subparagraph (c) be replaced with the word “ensure”; and that the words “or third party” be added at the end of subparagraph (c).

<sup>41</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations suggested inserting the phrase “of life at sea” after the word “safety”.

<sup>42</sup> The informal consultations held during the ninth session of the Ad Hoc Committee recommended merging former paragraph 2 of this article with paragraph 1.

<sup>43</sup> This proposal was made by China at the sixth session of the Ad Hoc Committee. The text is taken from article 110, paragraph 3, of the United Nations Convention on the Law of the Sea. Note that references to “ship” in that text are replaced with “vessel” for consistency with the other provisions of the draft Protocol. References to unfounded “suspicions” in that text have been changed because there is no prior reference to suspicion in this article. At the informal consultations held during the ninth session of the Ad Hoc Committee, some concerns were expressed with respect to who might be able to claim compensation under this provision, from whom and in what forum. Concerns were also raised about the payment of

4. Any measure taken, adopted or implemented in accordance with this chapter shall take due account of the need not to interfere with or to affect.<sup>44</sup>

(a) The rights and obligations and the exercise of jurisdiction of coastal States in accordance with the international law of the sea; and

(b) The authority of the flag State to exercise jurisdiction and control in administrative, technical and social matters involving the vessel.<sup>45</sup>

5. Any measure taken at sea pursuant to this chapter shall be carried out only by warships or military aircraft, or by other ships or aircraft clearly marked and identifiable as being on government service and authorized to that effect.<sup>46</sup>

6. No measures taken pursuant to this chapter shall be taken in the territorial sea, except with the permission of or as otherwise authorized by the coastal States.<sup>47, 48</sup>

[Article 7 *quater* was deleted.]<sup>49</sup>

---

compensation to “the vessel”, as opposed to its owner or another party. It was decided to maintain consistency with the wording of the United Nations Convention on the Law of the Sea and no changes were recommended.

<sup>44</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, two delegations suggested replacing the words “shall take due account of the need not to interfere with” with the words “shall not interfere with”.

<sup>45</sup> This text was proposed by the United States at the informal consultations held during the ninth session of the Ad Hoc Committee (A/AC.254/L.195), based on a proposal of the delegation of Singapore submitted to the sixth session of the Ad Hoc Committee (A/AC.254/4/Add.1/Rev.5, footnote 76) and article 17, paragraph 11, of the 1988 Convention.

<sup>46</sup> The language of this provision is derived from article 17, paragraph 10, of the 1988 Convention and from paragraph 20 of the IMO interim measures. The words “this chapter” were proposed by the United States at the informal consultations held during the ninth session of the Ad Hoc Committee (A/AC.254/L.195).

<sup>47</sup> The informal consultations held during the ninth session of the Ad Hoc Committee recommended the deletion of former paragraph 6 contained in A/AC.254/4/Add.1/Rev.5.

<sup>48</sup> Proposal by the United States at the informal consultations held during the ninth session of the Ad Hoc Committee (A/AC.254/L.195). The delegation of Islamic Republic of Iran suggested deletion of the words “or as otherwise agreed by” and other delegations suggested ending the paragraph with the word “sea”. Another delegation suggested deleting this paragraph. The word “action” was replaced with the words “measures” as requested for consistency with the revision of article 7 *bis*, paragraph 7. The delegation of Mexico agreed with the principle expressed in this paragraph, but voiced concerns about redundancy with the international law of the sea. It suggested that an interpretation note be prepared and incorporated into the *travaux préparatoires*.

<sup>49</sup> The informal consultations held during the ninth session of the Ad Hoc Committee recommended the deletion of former article 7 *quater* and the consequent amendment of article 8, paragraph 2.

### III. Cooperation, prevention and other measures<sup>50</sup>

[Article 7 *quinquies*<sup>51</sup>

*Measures for the protection of migrants*

1. States Parties that have not yet done so shall adopt the necessary legislation or other measures to preserve the rights of migrants, as accorded under applicable international law, in particular the right to life, the principles of non-discrimination and *non-refoulement* and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.<sup>52</sup>

2. States Parties shall afford migrants effective protection against violence that may be inflicted upon them, whether by public officials or by private individuals, groups or institutions, by reason of having been smuggled.<sup>53</sup>

3. States Parties shall afford due assistance, as far as possible, to migrants whose life or safety has been endangered by reason of having been smuggled.<sup>54</sup>

4. At the time of any detention, migrants shall be informed of their right to the protection and assistance of the consular or diplomatic authorities of the State of which they are nationals.<sup>55</sup>]

<sup>50</sup> There was a brief discussion at the sixth session of the Ad Hoc Committee about whether articles 8-11 were common with provisions of the draft Convention, and, if so, whether they were needed in the draft Protocol itself. No changes were made to the text, but several new proposals were submitted for consideration. The delegation of Mexico proposed new text for articles 8-11 (A/AC.254/L.96). The delegation of Germany proposed to make the application of article 9 discretionary rather than mandatory (A/AC.254/L.97). The delegation of Argentina proposed a new chapter III for the draft Protocol, dealing with trafficking in migrants by land. It was decided that further discussion of these articles would be deferred until texts for the corresponding provisions of the draft Convention had been agreed to (A/AC.254/L.99).

<sup>51</sup> This merged proposal was made by the delegations of Mexico and Morocco based on earlier texts (see A/AC.254/5/Add.24). There was a general discussion of this proposal at the informal consultations held during the ninth session of the Ad Hoc Committee, which recommended that it be incorporated into chapter III of the Protocol for the purposes of further discussion. Most delegations supported the objective of protecting migrants, but a number had concerns about specific elements of the proposed text. Delegations that supported the text cited the need for taking positive measures to protect migrants and the need for an overall balance between the policies set out in the Protocol. Delegations that expressed concerns felt that some elements of the proposal overlapped with article 15 *bis*, but indicated a willingness to consider further changes to that provision based on this text and on the non-discrimination provision in article 13, paragraph 2, of the draft Trafficking in Persons Protocol (A/AC.254/4/Add.3/Rev.6). The informal consultations recommended that a discussion of specific elements of the proposal be resumed at the next session of the Ad Hoc Committee at which the draft Protocol was taken up and the Chairman asked delegations to use the intervening time to examine the text more carefully. The consultations recommended that the text appear in square brackets at this point in the draft Protocol, pending a decision about its final placement, should it be adopted.

<sup>52</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations expressed concerns that this provision overlapped with existing article 15 *bis*. Many delegations noted that the proposed text contains a positive obligation that is not found in article 15 *bis* and some supported it, while others opposed it for that reason.

<sup>53</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations expressed concern about the reference to public officials in this paragraph. Several noted that matters of violent treatment were already the subject of domestic criminal law in all States.

<sup>54</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, most delegations indicated either support or acceptance of this proposed paragraph.

<sup>55</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, some delegations expressed support for this proposal. Many noted that the right to consular assistance was already found in the Vienna Convention on Diplomatic Relations of 1961 and the Vienna Convention on Consular Relations



*Article 8*

*Compliance measures and arrangements*

1. States Parties shall adopt every legislative and administrative measure needed in order to comply with the obligations deriving from this Protocol, having respect for the principles of sovereignty, territorial integrity and non-interference in internal affairs.
2. States Parties shall consider the conclusion of bilateral or regional agreements or operational agreements<sup>56</sup> or understandings aimed at:
  - (a) Establishing the most appropriate and effective measures to prevent, combat and limit the illegal smuggling of migrants, in accordance with this Protocol; or
  - (b) Enhancing the provisions of this Protocol among themselves.

*Article 9*

*Other legislative and administrative measures  
against smuggling of migrants by land, air or sea<sup>57, 58</sup>*

1. States Parties shall take legislative or other appropriate measures to prevent means of transport operated by commercial carriers from being used in the commission of offences established under article 4 of this Protocol.<sup>59</sup>
2. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.
3. State Parties shall take the necessary measures, in conformity with their domestic law, to provide for sanctions in cases of violation of the obligation set out in paragraph 2 of this article.<sup>60</sup>

---

of 1963. Some felt that this made its inclusion in this Protocol unnecessary, while others indicated that they could support its inclusion, provided that the wording matched that of the earlier instruments exactly.

<sup>56</sup> The addition of the words “or operational arrangements” was recommended by the informal consultations held during the ninth session of the Ad Hoc Committee following a recommendation to delete article 7 *quater*.

<sup>57</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee, it was recommended that the words “by land, air and sea” be added to this title, as this would make it unnecessary to refer to them repeatedly in the text.

<sup>58</sup> The text of this article is based on the proposal of the European Community (A/AC.254/L.198), which was discussed extensively at the informal consultations held during the ninth session of the Ad Hoc Committee. At the informal consultations, it was recommended that former article 9 be deleted and that this be adopted as the replacement text. There was also discussion of the proposal of Argentina entitled “Trafficking in migrants by land” (see A/AC.254/5/Add.24), some elements of which were incorporated into new article 9. Argentina reserved the right to raise other elements of its proposal during future discussions of this article.

<sup>59</sup> Two delegations expressed concern about the obligatory nature of this paragraph (see also A/AC.254/4/Add.3/Rev.6, footnote 98).

<sup>60</sup> At the informal consultations held during the ninth session of the Ad Hoc Committee several concerns about the new article were addressed. It was indicated that the text requires States Parties to impose an obligation on commercial carriers. That would require the carriers only to ascertain whether passengers have the necessary documents in their possession or not and not to make any judgement or assessment of the validity or authenticity of the documents. It was also noted that this text did not unduly limit the discretion of States Parties not to hold carriers liable for transporting undocumented refugees. Several other provisions either permit or require States Parties not to curtail such transport. Article 15 *bis*, as formulated at present, preserves general international law obligations and refers specifically to the 1951 Convention and 1967 Protocol relating to the Status of Refugees. In most countries, domestic constitutional or legal provisions

*[Articles 10 and 11 were not discussed.]*

*Article 12*  
*Security and control of documents*<sup>61</sup>

States Parties shall adopt such measures as may be necessary, in accordance with available means:

(a) To ensure that travel or identity documents issued by them are of such quality that they cannot easily be misused and cannot readily be unlawfully altered, replicated, falsified or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the States Parties and to prevent their unlawful creation, issuance and use.

*Article 13*  
*Legitimacy and validity of documents*

States Parties shall, upon request by other States Parties and subject to the domestic laws of the requested State Party, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in the name of the requested State Party and suspected of being used in the smuggling of migrants.

*[Articles 14-22 were not discussed.]*

---

---

protecting migrants would also apply in such cases. With these explanations, the informal consultations recommended adoption of the new text.

<sup>61</sup> Articles 12 and 13 result from the work of an informal drafting group that met during the sixth session of the Ad Hoc Committee. The revised texts were discussed at the informal consultations held during the ninth session of the Ad Hoc Committee, which recommended that they be adopted. It was noted that they corresponded to articles 9 and 9 *bis* of the draft Trafficking in Persons Protocol.