



General Assembly

Distr.: Limited
2 October 2000
English
Original: Russian

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

Eleventh session

Vienna, 2-27 October 2000

Agenda item 3

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

Proposals and contributions received from Governments

Belarus: amendments to articles 1, 2, 2 bis, 4, 6, 8 and 10 of 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

Article 1: Purposes

1. The fight against trafficking in persons, as a system of national and international measures, should in the opinion of Belarus, embrace the concepts “prevention”, “suppression” and “punishment”. This being so, and also in view of the title of the draft Protocol, Belarus proposes that subparagraph (a) be amended to read:

“(a) To prevent, suppress and punish international trafficking in persons, paying particular attention to the protection of women and children; and”.

Article 2: Scope of application

2. In order to demarcate the respective areas of applicability of the domestic legislation of States Parties and of the Protocol, Belarus proposes that the word “international” be retained in this article.

3. Belarus believes that the prevention of and the fight against international trafficking in persons, as a set of agreed joint measures to be adopted by the States Parties to the Protocol, are more closely related to the purposes of the Protocol set out in article 1. Article 2, “Scope of application”, should define the type or types of trafficking in persons to which the Protocol is to apply. Belarus believes that the scope of application of the Protocol should not extend to trafficking in persons that does not go beyond the boundaries

of national States and in which transnational organized crime groups are not involved. It is accordingly proposed to reformulate article 2 as follows:

“This Protocol shall apply to international trafficking in persons as defined in article 2 *bis* of this Protocol and when such trafficking involves an organized criminal group as defined in article [...] of the Convention.”

Article 2 bis: Definitions

4. In the light of its proposals on article 2 of the draft, Belarus proposes that the term “trafficking in persons” should be replaced with the term “international trafficking in persons”.

5. Belarus feels that the definition of the term “international trafficking in persons” should contain a reference that includes the words “irrespective of the consent of the person”, firstly because omission of those words would hamper full attainment of the aims of the Protocol, and secondly because exemption from responsibility for international trafficking in persons in cases where the consent of the victims of such trafficking was obtained would not be in line with international standards in the area of the human dimension, as enshrined in the Universal Declaration of Human Rights and other international documents.

6. Belarus believes that the enumeration of forms that the exploitation of victims of international trafficking in persons might take in subparagraph (a) should include the removal of organs and other parts of the human body, because this form of exploitation could, in practice, be one of the purposes of such trafficking.

Article 4: Assistance for and protection of victims of trafficking in persons

Paragraph 3

7. The obligations set forth in square brackets in the chapeau to paragraph 3 should be standardized and made applicable to all States Parties. Belarus suggests the following formulation:

“In appropriate cases and to the extent required and possible, States Parties shall implement measures to provide for the physical and psychological recovery of victims covered by this Protocol”.

Paragraphs 3 and 4

8. Bearing in mind that a victim of international trafficking in persons will remain only temporarily in the receiving State and will be repatriated subsequently on the basis of article 6, it would be advisable to impose on the receiving State only the obligations referred to in subparagraphs 3 (a), (b) and (c) and accordingly to omit the word “education” from paragraph 4 of article 4.

Paragraph 6

9. Since it is possible that paragraph 6 of article 4, providing for the award of compensation to victims for damage suffered, will be reformulated in such a way as to allow for the confiscation of illegally obtained assets for compensation purposes and in view of the non-obligatory nature of the provision in article 14 of the draft Convention regarding the return of confiscated criminally obtained assets to the requesting State, Belarus suggests that paragraph 6 should be amended to read:

“In appropriate cases, and to the extent possible, State Parties shall offer compensation to the victims of international trafficking in persons for damage suffered”.

Article 6: Repatriation of victims of trafficking in persons

10. In order to ensure the efficacy of the mechanism for repatriating victims of international trafficking in persons, it is proposed that a provision be added to this article regarding the means for such repatriation. Given that the revenue from trafficking in persons will generally, after its confiscation, be allocated as property of the receiving State, repatriation costs could logically also be covered in part by such revenue.

Paragraph 2

11. In paragraph 2, the words “and, as far as possible, voluntary” in square brackets should be deleted.

Article 8: Border measures

Paragraph 2

12. Since carriers may be state-owned as well as commercial, it is proposed that the word “commercial” be deleted in paragraph 2.

Paragraphs 2 and 3

13. In view of the fact that, in its meaning and content, paragraph 3 is a continuation of paragraph 2, it is proposed that the two paragraphs be merged as paragraph 2.

14. On the basis of the title of the article (“Border measures”), it would clearly be incorrect to impose on commercial carriers or owners or operators of vessels obligations to perform border control measures, these being largely performed in States by border and other competent services (see para. 12 above).

Paragraph 3

15. In view of the reference to the term “travel documents” in article 6, paragraph 5, and in article 8, paragraph 1, it is proposed that in article 8, paragraph 3, the word “passport” be replaced with the words “travel document” for the sake of consistency in the terminology used. In some States, moreover, the term “travel documents” denotes documents that provide entitlement to travel on a particular means of transport. It is therefore proposed that a definition be given in article 2 *bis* of the term “travel documents”.

Paragraph 4

16. Given that it is the States on which obligations are imposed to adopt measures to ensure such control, Belarus considers that States Parties should also be required to institute means (mechanisms) for implementing such measures in conformity with their domestic law. It is therefore proposed that paragraph 4 be deleted.

Article 10: Prevention of trafficking in persons

17. In line with the intention to create the conditions whereby the Protocol can be signed by as many States as possible and in view of the means available to those States, it is proposed that the stringent obligations contained in paragraphs 1 and 2 not be imposed upon them. Accordingly, it is proposed that the chapeau of paragraph 1 be amended to read:

“1. States Parties shall, to the extent possible, undertake comprehensive measures:”.

18. In view of the foregoing, the deletion is proposed of paragraph 2, together with the words “Policies, programmes and other” in paragraph 3.
