



# General Assembly

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

Eleventh session

Vienna, 2-27 October 2000

Agenda item 4

**Finalization and approval of the additional international legal instrument  
against illegal trafficking in and transporting of migrants**

### Proposals and contributions

#### **Recommendations of the informal working group on article 2 of the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime, submitted at the request of the Chairperson**

The informal working group proposes to continue work on article 2 on the basis of the following text:

*“Article 2  
“Definitions*

“For the purposes of this Protocol,

“(a) ‘Smuggling of migrants’ shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident;

“(b) ‘Illegal entry’ shall mean the crossing of borders without complying with the necessary requirements for legal entry into the receiving State.

*“Article 4  
“Criminalization*

“...

“(c) Enabling a person who is not a national or a permanent resident to remain in the State concerned without complying with the necessary requirements for legally

remaining in the State, by the means mentioned in subparagraph (b) of this article or any other illegal means.”

*Notes*

**Article 2**

1. The words “or illegal residence” should be deleted from subparagraph (a).
2. Subparagraph (c) should be deleted.

**Article 4**

3. The concept of illegal residence was considered with the addition of a new subparagraph (c) in paragraph 1 of article 4.
  4. The following words should be added at the end of the *chapeau* of paragraph 1 of article 4: “in order to obtain, directly or indirectly, a financial or other material benefit”.
  5. The *travaux préparatoires* should indicate that the reference to “financial or other material benefit” was introduced in paragraph 1 of article 4 in order to emphasize that that provision of the Protocol was not intended to criminalize humanitarian support given to migrants, in particular by non-governmental organizations or churches or support given on the basis of close family ties.
  6. The working group agreed that the Protocol should include reference to the offences established in accordance with article 4 when smuggling of migrants was mentioned, in particular in [article 3 *bis*]; article 8, paragraph 2 (a); article 10, paragraphs 1 and 3 (b), (d), (e) and (f); article 13; article 14, paragraphs 2 (c) and 3; and article 15.
  7. The *travaux préparatoires* should indicate that any illegal means other than those set forth in article 4, paragraph 1 (c), should be as defined in domestic law.
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