



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**

Status of discussions on article 15 of the revised draft Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

Note by the Secretariat

1. During the consultations on the revised draft Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime held from 9 to 13 October 2000 during the eleventh session of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, article 15 of the draft Protocol was discussed, but the discussions were suspended. It was agreed that the text on which those discussions were based, a proposal by Austria and Italy (A/AC.254/5/Add.35), would be incorporated into the interim text of the draft Protocol (A/AC.254/L.250/Add.3) to facilitate further discussion.

2. During the consultations, there was also agreement on a proposal by Austria to amend paragraph 5 of the proposal on article 15 by Austria and Italy (A/AC.254/5/Add.35) by inserting the word “applicable” before the word “operational” and deleting the words “applicable at the time of entry into force of this Protocol” at the end of the paragraph, so that the paragraph would read as follows:

“5. Paragraphs 1 to 3 of this article shall not affect the obligations entered into under any other treaty, bilateral or multilateral, or any applicable operational arrangement that governs, in whole or in part, the return of smuggled migrants.”

3. A proposal by Mexico to amend paragraph 1 of article 15 was also under consideration when the discussions were suspended. According to that proposal, paragraph 1 would be replaced with the following two new paragraphs:

“(…) Each State Party agrees to facilitate and accept, without undue or unreasonable delay, the return of a smuggled migrant who is a national of that State Party.

“(…) Each State Party shall consider the possibility of facilitating and accepting the return of a person who had the right of permanent residence in the territory of that State Party at the time of entry into the receiving State in accordance with its domestic law.”

4. Morocco made the following alternative proposal for article 15:

“States Parties are encouraged to conclude bilateral arrangements in order to consider the best practical ways and means of facilitating the return of smuggled migrants, taking into account the wishes of the migrants.”

5. The Philippines proposed to amend the proposal by Morocco to read as follows:

“(…) States Parties are encouraged to conclude bilateral arrangements in order to consider the best practical ways and means of facilitating the safe, orderly and dignified return of smuggled migrants, taking into account the wishes of the migrants.”

6. China proposed that the following note concerning article 15 be placed in the *travaux préparatoires*:

“The *travaux préparatoires* should indicate that nothing in article 15 of the Protocol should be interpreted as requiring any State Party to accept the return of any person who has been the object of conduct described in article 4 of the Protocol before that State Party has verified that the person whose return is sought by another State Party is one of its nationals.”
