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

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Item 4 of the provisional agenda*

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

Proposals and contributions received from Governments

Austria and Italy: amendments to articles 7 quinquies, 15 and 15 bis of the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the United Nations Convention against Transnational Organized Crime

Article 7 quinquies: Measures for the protection of migrants

1. Article 7 *quinquies* should be deleted.

Article 15: Return of smuggled migrants

2. Article 15 should be revised to read as follows:

*“Article 15
“Return of smuggled migrants*

“1. 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 or who had the right of permanent residence in the territory of that State Party at the time of entry into the receiving State.

“2. At the request of the receiving State Party, the State Party concerned shall, without undue or unreasonable delay, verify whether a smuggled migrant is a national of the requested State Party or had the right of permanent residence in the territory of the requested State Party at the time of entry into the receiving State Party.

“3. In order to facilitate the return of a smuggled migrant without proper documentation, the State Party of which the migrant is a national or in the territory

* A/AC.254/35.

of which the migrant had the right of permanent residence at the time of entry into the receiving State shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the migrant's readmission into its territory.

"4. Each State Party involved with the return of a smuggled migrant shall take all appropriate measures to carry out the return with due regard for the safety of the smuggled migrant.

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

"6. States Parties may cooperate with relevant international organizations regarding the implementation of this article.

"7. The provisions of this article shall be without prejudice to any right afforded to the smuggled migrant by any domestic law of the receiving State."

Article 15 bis: Saving clause

*"Article 15 bis
"Protection and saving clause*

"1. When implementing this Protocol, States Parties shall take all appropriate measures to respect the rights of smuggled migrants as set forth under applicable international law.

"2. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

"3. The application and interpretation of measures taken pursuant to this Protocol must be consistent with internationally recognized principles of non-discrimination.

"4. States Parties shall afford smuggled migrants appropriate protection against violence, which might be inflicted upon them by reason of being smuggled.

"5. States Parties shall afford appropriate assistance to smuggled migrants whose life or safety is endangered by reason of being smuggled.

"6. In the case of detention of a smuggled migrant, States Parties shall comply with their obligations under the Vienna Convention on Consular Relations, where applicable, including respect for the smuggled migrant's right to consular notification and communication and the consular officer's right to visit the smuggled migrant."