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

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Item 3 of the provisional agenda*

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

Proposals and contributions received from Governments

Azerbaijan: amendments to the preamble and articles 1-11 and 14 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

1. With a view to the discussion of the topics on the agenda of the eleventh session of the Ad Hoc Committee on the elaboration of a Convention against Transnational Organized Crime, Azerbaijan considers it necessary to make a number of proposals concerning the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Preamble

2. Azerbaijan proposes that the preambular paragraphs be designated by letters of the alphabet, as in the case of the Convention and the revised draft Protocol against the Smuggling of Migrants by Land, Air and Sea.

3. The penultimate preambular paragraph, which reads “*Taking into account* the provisions of the Convention”, should be deleted, because it duplicates the first preambular paragraph in its substance, and should be replaced with the following:

“*Taking into account* the Convention and other relevant instruments of the United Nations relating to trafficking in persons and protection of the victims of such trafficking.”

* A/AC.254/35.

Article 1: Purposes

4. In subparagraph (a) the word “international” in square brackets should be deleted since it would be preferable to indicate the transnational (international) character of trafficking in persons in article 2 (“Scope of application”) of the draft Protocol.
5. In subparagraph (b) the words “To promote and facilitate cooperation” should be replaced with the words “To promote cooperation”, which would correspond to article 1 (“Statement of objectives”) of the Convention.

Article 2: Scope of application

6. The following revised wording is proposed:

“This Protocol shall, except as otherwise provided herein, apply to the prevention, combating and protection of victims of trafficking in persons as defined in article 2 *bis* of this Protocol when such trafficking is transnational in character and involves an organized criminal group, as defined in articles 2 and 2 *bis* of the Convention.”

Article 2 bis: Definitions

7. In subparagraphs (a) and (b) different words are used with the same meaning. More specifically, it is stated that persons are procured “by the threat or use of force” and “by coercion”. The term “coercion” is broader in meaning and can be achieved both by means of threats and through the use of force. The same situation obtains with regard to the words “deception” and “fraud”, where the latter word, in the view of Azerbaijan, encompasses the meaning of the former since fraud is committed both through deception and through abuse of trust. In addition, the means indicated in subparagraph (a) of exerting pressure in order to procure persons rule out the possibility of the trafficked persons’ offering their consent. In view of the foregoing, it is proposed to reword subparagraphs (a) and (b) as follows:

“(a) ‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by the threat or use of force or by other means of coercion, by abduction, deception or the abuse of trust or power, or by the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation; exploitation shall include, at a minimum, any form of sexual exploitation, forced labour or services, slavery or practices similar to slavery, or servitude;

“(b) When referring to a child, the conduct set forth above shall be considered ‘trafficking in persons’ even if threat or use of force or other means of coercion, abduction, deception, abuse of trust or power or the consent of a person having control over the child are not involved;”

8. It is proposed that the square brackets around subparagraph (c) be removed.

Article 3: Obligation to criminalize

Paragraph 1

9. It is proposed that the words “such measures” be replaced with the words “such legislative and other measures” and that the words “where such conduct is intentional” be added after the word “Protocol”. These amendments are aimed at achieving greater consistency between the draft Protocol and the Convention.

Paragraph 2

10. It is proposed that the words “and shall impose penalties that take into account the grave nature of those offences” be deleted since they repeat a phrase already contained in paragraph 1 of this article.

11. In subparagraph (b) reference is made to participation as an accomplice in organizing, directing, aiding, abetting, facilitating or counselling the commission of an offence. However, it is evident that organizing, directing, aiding, abetting, facilitating and counselling are all forms of participating as an accomplice, which means that the current wording is tautological. It is therefore proposed that the words “Participating as an accomplice in organizing, directing, aiding, abetting, facilitating or counselling” be replaced with the words “Organizing, directing, aiding, abetting, facilitating or counselling”.

12. A new subparagraph should be added to paragraph 2 to read as follows:

“(...) Agreement or participation, as defined in paragraph 1 (a) of article 3 of the Convention, in relation to an offence set forth in article 2 *bis* of this Protocol.”

Article 4: Assistance for and protection of victims of trafficking in persons*Paragraphs 3 and 4*

13. Azerbaijan supports in part the proposal by the Holy See (see A/AC.254/5/Add.28), but considers that paragraphs 3 and 4 of article 4 should be amended to read as follows:

“3. In appropriate cases and to the extent possible, States Parties shall consider implementing measures, in cooperation with non-governmental organizations and other elements of civil society, to provide for the physical, psychological and social recovery of victims of crimes covered by this Protocol and, in particular:

“(a) ...;

“(b) ...;

“(c) Medical, psychological and material assistance; and

“(d)

“4. States Parties shall take into account, in applying the provisions of this article, the age- and gender-related requirements of victims of trafficking in persons, as well as the special requirements of children, including appropriate housing, education and care.”

Article 5: Status of the victim in the receiving State*Paragraph 1*

14. Azerbaijan supports in part the proposal by Italy (see A/AC.254/5/Add.28), but proposes that the words “to remain in their territories, temporarily or permanently, in appropriate cases” (see A/AC.254/4/Add.3/Rev.7) be replaced by the words “to obtain temporary or permanent residence status in their territories in appropriate cases”.

Article 6: Repatriation of victims of trafficking in persons

Paragraph 2

15. It is proposed that the words “as well as the status of any legal proceedings related to the fact that the person is” be replaced with the words “as well as any legal proceedings in which a person is recognized as”. It is also proposed that the words “and, as far as possible, voluntary” contained in square brackets in this paragraph be deleted.

Paragraph 5

16. It is proposed that the words “such trafficking” and “such travel documents or other authorization as may be necessary to enable the person to re-enter its territory” be replaced with the following wording, respectively: “trafficking in persons” and “identity documents and authorization necessary for the person’s repatriation”.

17. In this and other provisions of the draft Protocol reference is made to “travel documents” and “travel or identity documents”. However, no indication is given in any of these provisions as to what documents should be considered travel documents, which gives rise to difficulties in the comprehension of particular provisions of the Protocol. Azerbaijan considers that the term “travel documents” should be taken to mean documents giving entitlement to travel on a particular form of transport. This definition of the term should not cover documents confirming identity or providing authorization to enter a State. It is therefore proposed that a corresponding definition of the term “travel documents” be included in article 2 *bis*.

Article 7: Information and training measures for law enforcement

Paragraph 1

18. In view of the point made in the preceding paragraph, it is proposed that the word “travel” be deleted in subparagraph (a) of this article.

Article 8: Border measures

19. Azerbaijan essentially supports the proposal by the European Community (see A/AC.254/5/Add.28), but proposes the following amendments to that proposal:

(a) In paragraph 1, the words “with due respect for human rights” should be added at the end of the paragraph;

(b) In paragraph 4 of the European Community’s proposal (para. 3 in A/AC.254/4/Add.3/Rev.7), after the word “ascertain”, the words “to the extent possible” should be added and the word “travel” should be replaced with the words “valid passports and visas or any other”.

Paragraph 4

20. It is proposed that the word “intentional” be added before the word “violation”.

Article 9: International travel documents

21. It is proposed that the title of this article be amended to read “Ensuring the reliability of documents and their verification”.

Paragraph 1

22. The words “easily misused” and “readily ... unlawfully” used in this paragraph have the same meaning. In order to eliminate this tautology, one of these formulations should be deleted. It is also proposed that the square brackets around the word “, falsified” be removed.

Article 9 bis: [untitled]

23. It is proposed that the title of this article read “Verification of the legitimacy and validity of documents”.

Article 10: Prevention of trafficking in persons

24. It is proposed that this article be revised as follows:

“1. States Parties shall consider the development of comprehensive programmes and the implementation of other measures:

“(a) To detect, prevent and combat trafficking in persons; and

“(b)

“2. States Parties shall endeavour to take measures such as research, the establishment and strengthening of information programmes and social and economic initiatives to prevent trafficking in persons.

“3. Programmes and other measures taken in accordance with this article should include, in addition to other aspects of the prevention of trafficking in persons, cooperation with non-governmental organizations and other elements of civil society.”

Article 11: Cooperation with non-States Parties

25. Azerbaijan essentially supports option 1 for this article and also the proposal by China set forth in option 2. It is accordingly proposed that the two options be combined and that, carrying on from the second sentence of option 1, the article continue as follows: “To that end, the competent authorities of a State Party shall in appropriate cases notify the corresponding authorities of a non-State Party of instances where a victim of trafficking in persons who is a national of the non-State Party is in the territory of the State Party. Where agreement is reached between a State Party and a non-State Party regarding cooperation for the purposes of this Protocol, such cooperation shall proceed on the basis of equality and reciprocity.”

Article 14: Other provisions

26. Azerbaijan finds acceptable the title and drafting of this article as proposed by the Secretariat (see A/AC.254/5/Add.28).
