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

Sixth session

Vienna, 6-17 December 1999

Item 3 (a) of the provisional agenda\*

**Consideration of additional international legal instruments:**

**draft instrument against illegal trafficking in and transporting of migrants,  
with particular emphasis on articles 7-19**

**Proposals and contributions received from Governments**

**Addendum**

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\* A/AC.254/20.

## II. Proposals and contributions received from Governments

### China\*

[Original: English]

#### Article 7

1. After paragraph 10, insert a new paragraph as follows:

“(…) If a suspicion proves to be unfounded and the vessel being suspected has not committed any act to justify further suspicion, a State Party that has taken action in accordance with this article shall make compensation for any loss or damage that may have been sustained to that vessel.”

#### New article 11 bis

2. After article 11, add a new article [11 bis] as follows:

*“Article 11 bis*

*“Measures to eliminate the root causes*

“States Parties shall ensure the strengthening of international cooperation in order to eliminate the root causes of the smuggling of migrants, such as poverty and underdevelopment.”

### Holy See\*\*

[Original: English]

*Article 11*

*Prevention*

1. ...
2. ...

#### Additional paragraphs

(…) States Parties shall foster development programmes and cooperation at the national, regional and international levels, paying special attention to economically and socially depressed areas, in order to combat the root socio-economic causes of the trafficking in migrants.

(…) States Parties shall encourage cooperation on immigration and asylum policies and shall adopt such global migration strategies as may be necessary to prevent trafficking in migrants.

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\* Amendments previously issued in document A/AC.254/L.51.

\*\* Amendments previously issued in document A/AC.254/L.31.

**Lithuania\***

[Original: English]

**Article 9: Additional legislative and administrative measures**

1. Lithuania would like to point out that, on the basis of the *non bis in idem* principle, the sanctions provided for in article 9 may be applied to commercial carriers only in cases where no actions are brought against them for smuggling migrants. Lithuania ventures to express the view that the current wording of the article may leave it open to interpretation as stipulating that, on the basis of the same *non bis in idem* principle, commercial carriers guilty of smuggling migrants should bear administrative responsibility only and not be charged for smuggling migrants.

**Article 10: Information***Paragraph 2*

2. Paragraph 2 of article 10 of the draft Protocol would obligate States Parties to undertake preventive measures ensuring that potential migrants do not become victims of crimes committed by organized criminal groups. Lithuania would like to draw attention to the fact that the draft Convention could set obligations to take preventive measures ensuring the rights not only of potential migrants, but also those of migrants in the process of being transported and migrants who have already been transported.

3. In the opinion of Lithuania, the use of the term “victim” raises some doubts. The term “victim” suggests illegal violence used against a person. Lithuania therefore considers that in a case where a migrant may be considered the victim of a crime, the crime itself shall be recognized as trafficking in persons and not as smuggling migrants.

**Syrian Arab Republic**

[Original: Arabic]

**A. Amendments previously issued in document A/AC.254/L.46****Article 7: Measures against the smuggling of migrants by sea***Paragraph 1*

1. Replace the words “all generally accepted relevant international instruments” with the words “all relevant international instruments in force”.

*Paragraph 5*

2. Delete the phrase “and to a request for authorization made pursuant to paragraph 3 of this article” because the phrase would obligate the State Party to respond to the requested authorization, while paragraph 3 of this article allows the flag State to authorize the requesting State.

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\* Comments previously issued in document A/AC.254/L.55.

*Paragraph 13*

3. Replace the words “all generally accepted relevant international instruments” with the words “all relevant international instruments in force in the State concerned”.

*Paragraph 14*

4. Explain the meaning of “operational arrangements in relation to specific cases”.

**Article 8: Compliance measures and arrangements**

*Paragraph 1*

5. Add the words “subject to their fundamental legal principles” after the word “adopt”.

*Paragraph 2*

6. Delete the word “illegal” in subparagraph (a).

**Article 9: Additional legislative and administrative measures**

7. Add the words “subject to their fundamental legal principles” after the words “shall take”.

8. [Not applicable to the English text.]

**Proposed additional articles**

9. Articles should be added on the following questions:

(a) Assistance to the victims of smuggling, similar to article 4 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

(b) Status of smuggled persons in the receiving State, similar to article 5 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

(c) Seizure and confiscation of gains, similar to article 5 *bis* of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

**B. Further amendments**

10. Having reviewed the Arabic version of the revised draft Protocol, the Syrian Arab Republic would like to propose amendments to articles 7, 8, 9 and 11, as well as to suggest additional articles.

**Article 7: Measures against the smuggling of migrants by sea**

*Paragraph 1*

11. Replace the words “generally accepted” with the word “applicable”.

*Paragraph 5*

12. Delete paragraph 5, because it would oblige the State Party to respond to the request for authorization, whereas paragraph 3 of article 7 would provide for the flag State to authorize the requesting State to board and inspect the vessel and to take appropriate action.

*Paragraph 13*

13. Replace the words “generally accepted relevant international instruments” with the words “relevant international instruments applicable in the State concerned”.

*Paragraph 14*

14. The words “operational arrangements in relation to specific cases” need to be clarified.

**Additional paragraph**

15. The Syrian Arab Republic endorses the proposal made by China (A/AC.254/L.51) to add a new paragraph after paragraph 10 (see above under **China**).

**Article 8: Compliance measures and arrangements**

*Paragraph 1*

16. Add the words “, in accordance with its basic legal principles,” after the words “shall adopt”.

*Paragraph 2*

17. Delete the word “illegal” in subparagraph (a), because trafficking is an illegal act in itself.

**Article 9: Additional legislative and administrative measures**

18. Add the words “, in accordance with its basic legal principles,” after the words “shall take”.

19. The word “forfeiture” needs to be clarified.

**Article 11: Prevention**

20. The Syrian Arab Republic endorses the two paragraphs proposed by the Holy See (A/AC.254/L.31) for addition to this article (see above under **Holy See**).

**Article 11 bis**

21. The Syrian Arab Republic endorses new article 11 *bis*, proposed by China (A/AC.254/L.51) (see above under **China**).

**Additional articles**

22. Articles relating to the following issues should be added:

(a) Assistance for and protection of victims of trafficking in persons, in line with article 4 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

(b) Status of the victim in the receiving State, in line with article 5 of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

(c) Seizure and confiscation of gains, in line with article 5 *bis* of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

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