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Proposals and contributions received from Governments

Addendum

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II. Proposals and contributions received from Governments

Belgium

[See document A/AC.254/L.57.]

China

[See document A/AC.254/L.52.]

Colombia: amendments to 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

[Original: Spanish]

Article 5: Status of the victim in the receiving State

1. The following wording is suggested for paragraph 2:
 - “2. Each State Party shall give appropriate consideration to humanitarian and support factors in determining the status of migrant of such a victim in its territory when it is the receiving State.”
2. In the above text, the word “compassionate” has been replaced by the word “support” since the latter term would be more appropriate bearing in mind that the notion of support would be consistent with the victim assistance and protection measures adopted under the Protocol, such as those in articles 4 and 7. Also, the proposed text stipulates that the status of the victim is that of migrant and not any other status, thus preventing the victim from being liable to any form of punishment by reason of international trafficking.

Article 5 bis: Seizure and confiscation of gains

3. The following wording is suggested:
 - “States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of property, instrumentalities and profits derived from the offences described in this Protocol, in conformity with individual guarantees enshrined in their domestic legislation. The proceeds from confiscation shall be used to defray the costs of providing due assistance to the victim.”
4. In the suggested wording, the phrase “where deemed appropriate by States Parties and as agreed by them” has been deleted. This is because the agreements between States Parties would relate only to cooperation measures for the detection of offences or the confiscation of property, which would not follow from the proposed text.
5. It is felt that the article should expressly refer to confiscation of property and instrumentalities that is achieved through cooperation between States and to the possibility of sharing such proceeds.

Holy See

[See document A/AC.254/L.32/Add.1.]

India

[See document A/AC.254/L.65.]

Italy

[See document A/AC.254/L.30.]

Libyan Arab Jamahiriya

[See document A/AC.254/L.63.]

Lithuania

[See document A/AC.254/L.56.]

Mexico: comments and proposals on document A/AC.254/4/Add.3/Rev.2

[Original: Spanish]

Article 3: Obligation to criminalize

1. The following new wording is proposed:

“1. States Parties that have not done so shall adopt such legislation and other measures as are necessary to establish as criminal offences the conduct referred to in article [...] of this Protocol and to impose penalties that take into account the grave nature of such conduct.

“2. To the extent permitted by domestic law, intentional participation in any of the unlawful acts referred to in article [...] of this Protocol shall also be punishable.”¹

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

2. The following new wording is proposed:

¹ The wording of this paragraph is based on that of article 4 of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317 (IV), annex).

“1. In appropriate cases and to the extent permitted by domestic law, each State Party:

“(a) Shall prevent any form of punishment from being imposed on persons, in particular women and children, who are victims of international trafficking;

“(b) Shall ensure that victims of trafficking in persons, especially women and children, receive adequate protection;

“(c) Shall inform victims of crimes covered by this Protocol about the relevant court and administrative proceedings;

“(d) Shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings related to trafficking in persons;

“(e) Shall assist victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence;

“(f) Shall provide appropriate housing, economic assistance and psychological, medical and legal support for victims of crimes covered by this Protocol;

“(g) Shall provide appropriate housing, education and care for children in governmental custody;

“(h) Shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.

“2. In addition to the measures provided for in article 7 of this Protocol, each State Party that has not already done so shall enact immigration laws and/or adopt legislative or administrative measures that will enable identified victims of trafficking within its territory, after due consideration is given to humanitarian factors, to remain in its territory temporarily or, where appropriate, permanently.”²

Article 5: Status of the victim in the receiving State

3. It is proposed that the text of article 5 be merged with that of article 4 as indicated above. Article 5 would thus be deleted.

Article 5 bis: Seizure and confiscation of gains

4. It is proposed that article 5 bis be deleted.

Article 6: Return of victims of trafficking in persons

5. It is proposed that the title and text of article 6 be replaced by the following:

“Article 6

“Repatriation of victims of trafficking in persons

“1. Each State Party agrees to facilitate and accept the return of a victim of trafficking in persons who is a national of that State Party or who has the right of abode in the receiving State.

² Text based on the proposal of France and the United Kingdom of Great Britain and Northern Ireland, amended by Mexico and Morocco.

“1 *bis*. Each State Party shall agree to facilitate the repatriation of victims of such trafficking who desire to be repatriated or who may be claimed by persons exercising authority over them or whose repatriation is ordered in conformity with the domestic law of each State.”³

“1 *ter*. Repatriation shall take place only after agreement is reached with the State of destination as to the identity and nationality of the persons concerned, as well as to the place and date of arrival at frontiers. Each Party to this Protocol shall facilitate the passage of such persons through its territory.”⁴

“2. At the request of a State Party that is the receiving State, each State Party shall, without due or reasonable delay, verify whether a person who is a victim of such trafficking is a national of the requested State.”⁵

“3. In order to facilitate the return of victims of such trafficking who are without proper documentation, each State Party shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable such a victim who is a national of that State Party or who has the right of abode in the receiving State to re-enter its territory.”

Article 7: Victim rehabilitation

6. It is proposed that the title of article 7 be replaced by the following: “Compensation and restitution to victims”.

Article 8: Law enforcement measures

7. It is proposed that the title and text of article 8 be replaced by the following:

“Article 8 “Cooperation

“1. Within the scope of their respective areas of jurisdiction and within the framework of their domestic law, States Parties shall cooperate with one another in preventing and combating international trafficking in persons.

“2. For the purposes of paragraph 1 of this article, States Parties shall exchange information and establish systems of judicial cooperation that will contribute to improving the prevention and combating of unlawful conduct relating to international trafficking in persons. Moreover, they shall cooperate closely with a view to providing adequate protection and assistance for victims of such trafficking.”

Article 9: Border controls

It is proposed that the title and text of article 9 be replaced by the following:

³ The wording of this paragraph is based on that of article 9, paragraph 2, of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

⁴ The wording of this paragraph is based on that of article 9, paragraph 2, of the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

⁵ No change is proposed in the wording of this paragraph.

“Article 9

“Training

“All States Parties shall provide law enforcement, immigration or other relevant officials with specialized training in the prevention of international trafficking in persons and the treatment of victims of such trafficking, including protection of their human rights, or shall strengthen existing specialized training in that area.”

Article 10: Security of travel documents

It is proposed that article 10 be deleted.

Article 11: Verification of documents

It is proposed that article 11 be deleted.

Morocco

[Original: French]

Article 5: Situation of the victim in the receiving State

Paragraph 1

It is proposed that paragraph 1 of article 5 be replaced by the following:

“1. In addition to measures provided for pursuant to article 7 of this Protocol, each State Party that has not done so shall enact immigration laws and/or adopt legislative and administrative measures that permit identified victims of trafficking in persons, after due consideration is given to humanitarian and compassionate factors, to remain in its territory temporarily or, in appropriate cases, permanently.”

Syrian Arab Republic

[See document A/AC.254/L.46, sect. B.]

Article 8: Law enforcement measures

6. Adopt footnote 37.

United States of America

[See document A/AC.254/L.54.]