



General Assembly

Distr.: General
29 September 2000
English
Original: French

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

Eleventh session

Vienna, 2-27 October 2000

Item 6 of the provisional agenda*

**Concordance among the three additional international legal instruments
and with the United Nations Convention against Transnational
Organized Crime, as approved by the Ad Hoc Committee
at its tenth session**

Proposals and contributions received from Governments

France: relationship between the United Nations Convention against Transnational Organized Crime and the additional international legal instruments against trafficking in persons, smuggling of migrants and trafficking in firearms

1. France wishes to insert in each of the three protocols supplementing the United Nations Convention against Transnational Organized Crime an article, worded in identical terms, governing the relationship between the protocols and the Convention and appearing at the beginning of those instruments. That article would consist of two separate paragraphs.
2. The first paragraph would state the link with the Convention, to which the protocols are additional instruments. It would thus pick up article 37, paragraph 1, of the Convention (A/AC.254/36), which provides as follows: "This Convention may be supplemented by one or more protocols." Its wording is based on article 1, paragraph 3, of Protocol I, of 1977, Additional to the Geneva Conventions of 1949.
3. The second paragraph is intended to permit the application of the provisions of the Convention within the scope of the three protocols. Its wording is based on article 85, paragraph 1, of Protocol I, of 1977, Additional to the Geneva Conventions of 1949.
4. Merely stating the link between the protocols and the Convention is insufficient if there is no equivalence between the offences established by the different protocols on the

* A/AC.254/35.

one hand and either of the two categories of offences covered by the Convention on the other (i.e. the offences established by the Convention and serious crime).

5. The offences established by the protocols can constitute serious crimes, within the meaning of the Convention, only if they satisfy the requirements laid down by the Convention with regard to the harshness of the penalty incurred. Indeed, the Convention defines serious crime as “conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”. However, no provisions in the protocols require States Parties to provide for any minimum penalty in respect of the offences defined in those instruments. Thus, if domestic law provides for a penalty less serious than that fixed by the Convention (for example, imprisonment for two years), the offences defined by the protocols will not be serious crimes.

6. It would therefore seem preferable to make the offences established by the protocols equivalent only to the offences established by the Convention under its article 3, paragraph 1 (a). An explicit provision is necessary for this purpose. The provisions of the Convention would thus apply unambiguously to its three additional instruments. This is the intention of paragraph 2 of the proposal below.

7. The text of this article 1, which would be common to the three protocols, would read as follows:

*“Article 1
“Relation to the United Nations Convention
against Transnational Organized Crime*

“1. This Protocol supplements the United Nations Convention against Transnational Organized Crime (hereinafter referred to as ‘the Convention’).

“2. The offences established by article [...] of this Protocol shall be regarded as offences established under the Convention within the meaning of article 3, paragraph 1 (a), of the Convention and the provisions of the Convention shall apply accordingly.”
