

Reference: C.N.473.2023.TREATIES-XVIII.12.b (Depositary Notification)

PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA
AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION
AGAINST TRANSNATIONAL ORGANIZED CRIME

NEW YORK, 15 NOVEMBER 2000

BELARUS: COMMUNICATION

The Secretary-General of the United Nations, acting in his capacity as depositary, communicates the following:

The above action was effected on 13 November 2023.

(Original: English and French)

“N° 02-24/1318

The Permanent Mission of the Republic of Belarus to the United Nations presents its compliments to the Secretary General of the United Nations and has the honour to transmit the following *statement and clarifications of the Republic of Belarus with respect to the Communication of the Republic of Lithuania* (C.N.374.2023.TREATIES-XVIII.12.b (Depositary Notification)) in regard to the Interpretative Declaration of the Republic of Belarus concerning Article 20 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime adopted on 15 November 2000 (C.N.225.2023.TREATIES-XVIII.12.b (Depositary Notification)).

The Republic of Belarus made the Interpretative Declaration concerning Article 20 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime adopted on 15 November 2000 (thereafter – Protocol) addressing it to all Parties to this Protocol.

The Republic of Belarus admits that States Parties have the full right to make their declaration or indicate their disagreement in whole or in part on the substance of its interpretative declaration to the Protocol. But at the same time *their communications or objections on the issue shall not essentially constitute disguised late reservations to the treaty or arbitrarily distort the content and objective of the made interpretative declaration.*

The main purpose of the Interpretative Declaration is to clearly highlight the inadmissibility of the *retroactive effect* of withdrawal of reservations previously made by any State Party to the Protocol on non-recognition of the jurisdiction of the International Court of Justice under Article 20 of the Protocol, as well as the inadmissibility of any attempts of this State Party to extend the jurisdiction of the International Court of Justice to the application of the Protocol in the relations with other States Parties which took place prior to that kind of withdrawal (jurisdiction *ratione temporis*).

The State Parties to the Protocol *that withdraw their reservations on no-recognition of the jurisdiction of the International Court of Justice shall not dilute by this action* the true and fair meaning of Article 20 (3) of the Protocol containing *the wording widely used in similar provisions of many other United Nations multilateral treaties*: “The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation”. These provisions keep the validity with respect to the situations of the performance of the Protocol happened before the withdrawals.

The communications of State Parties to the Interpretative Declaration of the Republic of Belarus *which dilute the above meaning of Article 20 (3) of the Protocol to establish the retroactive effect of the mentioned type of the withdrawals are to be regarded as amounting to reservations to Article 20 (3) of the Protocol*, which are not envisaged by the Protocol and shall have no any (sic) legal effect.

The retroactive effect of withdrawal of reservations is inadmissible, because it puts the States Parties which recognized the jurisdiction of the International Court of Justice *ab initio* on unequal legal footing in relation to the States Parties which have withdrawn their reservations to Article 20 (2) of the Protocol. The latter would get more freedom and legal certainty to plan and initiate proceedings before the International Court of Justice than the former. Such an interpretation would be contrary to both treaty law and the Protocol and the principle of sovereign equality of States.

The Interpretative Declaration of the Republic of Belarus does not purport to exclude or to modify the obligations under the Protocol in their application to other parties *or deny their right to withdraw any kind of reservations earlier made*. It was made to highlight provisions of the Protocol concerning reservations on the jurisdiction of the International Court of Justice for promoting their conventional observance, application and interpretation (according to Part III of the 1969 Vienna Convention on the Law of Treaties “Observance, application and interpretation of treaties”).

In addition, the Republic of Belarus interprets the practice of withdrawal of a reservation to Article 20 (2) of the Protocol in a short period of time before the initiation of proceedings before the International Court of Justice as a possible contradiction to the principles *pacta sunt servanda*, good faith (*bona fide*) and free consent, depending on the faithfulness of subsequent actions of States Parties concerned. These principles are fundamental universally recognized principles of law that govern the creation, performance and interpretation of legal obligations under treaties, including the obligations under the Protocol (*see* the Preamble to the 1969 Vienna Convention on the Law of Treaties).

The Republic of Belarus also emphasizes with its interpretative declaration that the practice of application of Article 20 of the Protocol should not be construed to undermine the effectiveness of all the available peaceful dispute settlement means based on the genuine consent of the States Parties to the Protocol or to provoke an unjustified and biased recourse to the International Court of Justice.

Therefore, in the opinion of the Belarusian Party, the objections to the Interpretative Declaration of the Republic of Belarus alleging the latter to be a reservation constitute themselves wrong presentations of the Interpretative Declaration of the Republic of Belarus and/or disguised late reservations to Article 20(3) of the Protocol which are unacceptable to Belarus as a Party to the Protocol.

Bearing the aforementioned in mind, the Permanent Mission of the Republic of Belarus to the United Nations requests the Secretary General of the United Nations as the Depository to disseminate this statement and clarifications of the Republic of Belarus among all Parties to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime adopted on 15 November 2000.

The Permanent Mission of the Republic of Belarus to the United Nations avails itself of this opportunity to renew to the Secretary General of the United Nations the assurances of its highest consideration.

New York, 13 November 2023”

16 November 2023

